

13-1573-cv(L)

**13-1677-cv(CON), 13-1798-cv(CON),
13-1830-cv(CON), 13-1853-cv(CON)**

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

—»»»—
IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION

AMP CAPITAL INVESTORS LIMITED, COLONIAL FIRST STATE INVESTMENTS LTD,
H.E.S.T. AUSTRALIA LTD, MICHAEL WASHENIK, ORLOFF FAMILY TRUST DTD 10/3/91,
ORLOFF FAMILY TRUST DTD 12/31/01, ST. STEPHEN, INC., LEONARD MASIEWSKI,
MARYANN MASIEWSKI, MICHAEL J. RINIS, BABETTE RINIS, MICHAEL J. RINIS, IRA,

Objectors-Appellants,

and

CHARLES N. DORNFEST,

Plaintiff-Appellant,

(Additional Caption on the Reverse and Following Page(s))

*On Appeal from the United States District Court
for the Southern District of New York (New York City)*

**BRIEF AND SPECIAL APPENDIX FOR
PLAINTIFF-APPELLANT CHARLES N. DORNFEST**

Judith L. Spanier
ABBAY SPANIER, LLP
212 East 39th Street
New York, New York 10016
212-889-3700

Jeffrey H. Squire
Raymond A. Bragar
Lawrence P. Eagel
BRAGAR EAGEL & SQUIRE, P.C.
885 Third Avenue, Suite 3040
New York, New York 10022
212-308-5858

Attorneys for Plaintiff-Appellant Charles N. Dornfest

v.

PUBLIC PENSION FUNDS, THE PUBLIC PENSION FUND GROUP, STEVEN J. SKLAR, AS (IRA ACCOUNT BENEFICIARY), ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, RHONDA WILSON, ALMA ALVAREZ, MICHAEL R. BAHNMAIER, MARK ADAMS, ELIZABETH EAGEN, VERNON C. DAILEY, RICHARD ADAME, ARLENE KAHN, PETRA CHATMAN, STICHTING PENSIOENFONDS ABP, GRANT MITCHELL, NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION OF COLORADO, STEVE R. GRABER, INDIVIDUALLY, AS ASSIGNEE OF CLAIMS OF THE SRG 2008 TRUST, SCHWAB SP500 INDEX FUND, SCHWAB 1000 INDEX FUND, SCHWAB INSTITUTIONAL SELECT SP500 FUND, SCHWAB DIVIDEND EQUITY FUND, SCHWAB CORE EQUITY FUND, SCHWAB PREMIER EQUITY FUND, SCHWAB FUNDAMENTAL US LARGE COMPANY INDEX FUND, SCHWAB TOTAL STOCK MARKET INDEX FUND, SCHWAB SP500 INDEX PORTFOLIO, SCHWAB MARKETTRACK GROWTH PORTFOLIO, SCHWAB MARKETTRACK BALANCED PORTFOLIO, SCHWAB INVESTMENTS, SCHWAB CAPITAL TRUST, DR. SALOMON MELGEN, FLOR MELGEN, SFM HOLDINGS LIMITED PARTNERSHIP, INTERNATIONAL FUND MANAGEMENT S.A., DEKA INTERNATIONAL S.A. LUXEMBURG, DEKA INVESTMENT GMBH, DI, AARON KATZ, JOEL KATZ, SYLVIA WEISSMANN, PARKER FAMILY INVESTMENTS L.L.C., JEFFREY R. PARKER, THE 1997 JEFFREY R. PARKER FAMILY TRUST, DREW E. PARKER, THE 1994 DREW E. PARKER FAMILY TRUST, KEITH D. PARKER, JULIE M. SORIN, THE 1991 JEFFREY R. PARKER FAMILY TRUST, THE 1994 JULIE P. MANTELL FAMILY TRUST, MICHAEL A. PARKER, MARK D. WENDER, ELLIOT WENDER, PENINA WENDER, STANLEY L. WENDER, RAZELLE M. WENDER, JILL W. GOLDSTEIN, JERRY E. FINGER, AMBASSADOR LIFE INSURANCE COMPANY, SELECT INVESTORS EXCHANGE FUND, L.P., RICHARD FINGER, JEF FAMILY TRUST, 1976 REAL ESTATE TRUST, WALTER FINGER, THE JERRY E. FINGER FAMILY TRUST D/T/D 12/28/1989, THE JERRY E. FINGER FAMILY TRUST, LEO R. JALENAK, PEGGY E. JALENAK, KERS & CO., ROBERT GEGNAS, 198 LOCHA DRIVE, JUPITER, FL 334587752, STEVEN L. SHAPIRO, HARVEY M. MITNICK, NATHAN A. FRIEDMAN, BONNIE FRIEDMAN, KENNETH A. CIULLO, JOANNA CIULLO, THOMAS P. DiNAPOLI, COMPTROLLER OF THE STATE OF NEW YORK, AS ADMINISTRATIVE HEAD OF THE NEW YORK STATE AND LOCAL RETIREMENT SYSTEMS AND AS SOLE TRUSTEE OF THE NEW YORK STATE COMMON RETIREMENT FUND, SCHWAB FINANCIAL SERVICES FUND, O. TEMPLE SLOAN, JR.,

Plaintiffs-Appellees,

v.

BANK OF AMERICA CORP., GARY A. CARLIN, NELSON CHAI, KENNETH D. LEWIS, JOHN A. THAIN, FRANK P. BRAMBLE, SR., WILLIAM BARNET, III, JOHN T. COLLINS,

GARY L. COUNTRYMAN, TOMMY R. FRANKS, CHARLES K. GIFFORD, MONICA C. LOZANO, WALTER E. MASSEY, THOMAS J. MAY, PATRICIA E. MITCHELL, THOMAS M. RYAN, MEREDITH R. SPANGLER, ROBERT L. TILLMAN, JACKIE M. WARD, NEIL A. COTTY, JOE L. PRICE, BANC OF AMERICA SECURITIES L.L.C., MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, BANK OF AMERICA, J. STEELE ALPHIN, AMY WOODS BRINKLEY, BARBARA J. DESOER, LIAM E. MCGEE, TIMOTHY J. MAYOPOULOS, BRIAN T. MOYNIHAN, BRUCE L. HAMMONDS, RICHARD K. STRUTHERS, BANK OF AMERICA CORPORATION CORPORATE BENEFITS COMMITTEE DEFENDANTS, BANK OF AMERICA COMPENSATION AND BENEFITS COMMITTEE DEFENDANTS, KEITH T. BANKS, TERESA BRENNER, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, GREGORY CURL, JOHN D. FINNEGAN, GREGORY FLEMING, FOX-PITT KELTON COCHRAN CARONIA WALLER (USA) L.L.C., J.C. FLOWERS & Co., L.L.C., JUDITH MAYHEW JONAS, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, MICHAEL ROSS, CHARLES O. ROSSOTTI, PETER STINGI, THOMAS K. MONTAG, KENNETH D. DAVIS, MARTIN I. FINEBERG, KENNETH A. LEWIS, MERRILL LYNCH & Co., INC., 4 WORLD FINANCIAL CNETER, NEW YORK, NY 10080, BANK OF AMERICA CORPORATION, 100 N. TRYON STREET, CHARLOTTE, NC 28255, JOSEPH L. PRICE, JEREMY FINEBERG,

Defendants-Appellees,

and

PETER KRAUS,

Defendant.

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STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States. Specifically, plaintiff-appellant Charles N. Dornfest (“Dornfest”) asserted claims under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. §240.10b-5 (“Rule 10b-5”).

On July 29, 2011, the district court issued a Memorandum and Order (Joint Appendix For Plaintiff-Appellant at A1202-A1226, cited hereafter as “A___”) dismissing all of lead plaintiffs’ (“Lead Plaintiffs”) option claims save one (a two year “leap” option (the “January 2011 Leap Option”)) (A1225), and holding that Lead Plaintiffs lacked standing to assert claims for a “BOA Options Class” (i.e., persons who invested in Bank of America (“BOA”) options during the Class Period – September 18, 2008 through January 21, 2009, inclusive – and were damaged thereby).

On September 29, 2011, the district court issued a Memorandum and Order (A1488-A1492) holding that Dornfest, an investor in 17 different BOA options, was precluded from making a motion to certify a BOA Options Class. (A1492)

On March 21, 2012, this Court issued a Mandate (A1571-A1572) (i) dismissing, without prejudice to Dornfest's right to seek certification of an interlocutory appeal under 28 U.S.C. § 1292(b), Dornfest's petition for leave to appeal under Fed. R. Civ. P. 23(f) from the district court's September 29, 2011 order precluding Dornfest from making a motion to certify the BOA Options Class; and, (ii) denying Dornfest's petition for a writ of mandamus.

On April 16, 2012, the district court issued a Memorandum and Order (A1614-A1617) denying Dornfest's motion for certification of an interlocutory appeal under 28 U.S.C. § 1292(b) from the district court's September 29, 2011 Order that precluded Dornfest from making a motion to certify the BOA Options Class.

On April 9, 2013, the district court entered a final Judgment (A2009-A2022) that, in relevant part, dismissed Dornfest's complaint.

Plaintiff timely filed his Notice of Appeal (A2079-A2080) on April 25, 2013.

This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

(1) Whether, after first holding that the Lead Plaintiffs lacked standing to represent a class of persons who had invested in the many BOA

options in which Dornfest had invested, did the district court err by then precluding Dornfest from moving to certify a class of such option investors?

(2) Whether the district court erred when it held that the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(3)(B) (the “PSLRA”), empowered lead plaintiffs to prevent an investor from moving to certify a class of persons the lead plaintiffs had been held not to represent?

STATEMENT OF THE CASE

On or about January 21, 2009, the first of a number of class action complaints¹ (A980) was filed against various defendants alleging that during the period from about September 18, 2008, through January 21, 2009 (the “Class Period”), BOA and various defendants made, with scienter, untrue statements of material fact and/or omitted material statements of fact regarding \$5.8 billion in bonuses paid to employees of Merrill Lynch, (“Merrill”) and failed to disclose, although required to do so, Merrill’s \$21 billion fourth quarter 2008 losses. Those misrepresentations/omissions inflated the price of BOA securities and, when the truth was disclosed in January 2009, the price of those securities plummeted. (A475-476)

¹ Certain of these complaints alleged a class of all persons who, during the class period described therein, purchased BOA securities. For example, a complaint filed by one of Lead Plaintiffs’ eventual counsel alleged a class claim on behalf of “all persons who purchased or otherwise acquired the securities of Bank of America in the period from January 2, 2009 through January 20, 2009.” (A401)

Various plaintiffs filed notices and motions to be appointed (a) lead plaintiffs for a class of stock purchasers; (b) lead plaintiffs for derivative claimants; and (c) lead plaintiffs for a class of ERISA plaintiffs. (A422-424) Certain of those PSLRA notices, including at least one filed by counsel for a party eventually appointed lead plaintiff, purported to be issued for a class of purchasers of all BOA securities. (A860-A861) The district court (Chin, J.) ordered (A422-A446) the appointment of Lead Plaintiffs and their counsel in the BOA securities action (the “Securities Action”) and also coordinated all filed cases. (A446)

On about September 25, 2009, Lead Plaintiffs filed a Consolidated Amended Class Action Complaint and alleged class claims on behalf of purchasers of BOA common stock, but did not allege any claims for BOA option investors. (A465-A600)

Since Lead Plaintiffs at that point had not sought to represent a BOA Options Class, on January 13, 2010, Dornfest filed a complaint (A618-A726) alleging claims for the BOA Options Class, and on January 15, 2010, published a PSLRA lead plaintiff notice for the BOA Options Class on *Business Wire*. (A751-A752)

On March 15, 2010, Dornfest filed a timely motion to be appointed lead plaintiff for the BOA Options Class² (A813-A814) and Lead Plaintiffs and defendants filed briefs opposing Dornfest's motion. Significantly, in their brief filed on April 1, 2010 (A949-A965), Lead Plaintiffs (A962) argued that they had not abandoned options investors. They cited cases to support Lead Plaintiffs' argument (A960) that stock purchasers and options investors could be "members of the same class" and argued (A964) that Lead Plaintiffs should be "most capable of adequately representing the interests of class members" (emphasis added).

In an order issued April 9, 2010 (A970-A978), the district court ruled that Dornfest's action should be consolidated; that Dornfest only could pursue an individual claim; that "it is within lead plaintiff's authority to decide which claims to assert on behalf of the class" (A973, emphasis added); and that since Lead Plaintiffs "advise they are still assessing whether to assert claims on behalf of [option investors]...Lead Plaintiffs should be given the opportunity to make this decision." (A974)

At that time, neither the district court, nor Lead Plaintiffs, nor Dornfest questioned Lead Plaintiffs' standing to assert claims for the BOA

² A group of option investors also moved to be appointed lead plaintiff for the BOA Options Class, but, in the face of Dornfest's larger loss, that group abandoned its motion.

Options Class. Indeed, the district court's order suggests that Lead Plaintiffs, should they have concluded it desirable, could assert class-wide option claims.

On May 14, 2010, defendants wrote (A979-A986) to the district court (Castel, J.), who succeeded Judge Chin upon his elevation to this Court) to note, *inter alia*, that although Dornfest had been ordered to proceed individually, defendants proposed to treat Dornfest's action as consolidated with the Securities Action and were not required to answer his complaint. On May 18, 2010, Dornfest replied (A992-A1001), arguing that the district court had not foreclosed eternally a BOA Options Class, but "deferred the issue" to provide "an opportunity for Lead Plaintiffs to assess whether to pursue a claim for the class of options investors." (A992-A993)

On May 20, 2010, the district court ordered (A1002-A1003), regarding the BOA Options Class:

By May 27, 2010, Lead Plaintiffs in the Consolidated Securities Action shall inform the Court, in writing, whether any member of the Lead Plaintiffs invested in BofA options, and if so, the amount of such investment.

(A1003) On May 27, 2010, Lead Plaintiffs responded (A1004) and stated that no Lead Plaintiff had invested in any BOA option, "but that lead plaintiffs' counsel had been retained by Grant Mitchell" ("Mitchell"), who Lead Plaintiffs' counsel stated had lost \$2,486 (namely less than one percent

of Dornfest's verified loss) in BOA options trading. Lead Plaintiffs' counsel said they were prepared to add Mitchell as a lead plaintiff which would satisfy any standing requirements, citing *Hevesi v. Citigroup*, 366 F.3d 70, 83 (2d Cir. 2004).

Then, on October 15, 2010, Lead Plaintiffs determined that BOA option claims should be asserted. They filed a Consolidated Second Amended Class Action Complaint (A1036-A1168) that alleged a class claim brought by additional Lead Plaintiff Mitchell on behalf of a class that included all BOA option investors. (A1138)

Defendants moved to dismiss that complaint and argued, *inter alia*, that Lead Plaintiffs lacked standing to assert class claims for persons who invested in BOA options other than the single January 2011 Leap Option Lead Plaintiff Mitchell had purchased. (A1203) In response, Lead Plaintiffs argued that their standing extended to all BOA option securities affected by the same alleged misstatements.

Dornfest submitted two letter briefs (A1190-A1191, A1196-A1198) in opposition to defendants' motion to dismiss the options claims on standing grounds, arguing that since his case had been consolidated with Lead Plaintiffs' case, his investments in BOA options supplied standing.

Defendants argued that Dornfest was incorrect and that his letter briefs should not be considered. (A1192-A1195, A1200-A1201)

On July 29, 2011, the district court granted in part and denied in part defendants' motion to dismiss (A1202-A1226, at A1225), holding that Lead Plaintiffs lacked standing to assert class claims on behalf of BOA securities they did not purchase. Since the only BOA option a Lead Plaintiff had purchased was Mitchell's January 2011 Leap Option, the district court dismissed all of the other Lead Plaintiffs' option claims and, in a footnote (A1225, n.11), ruled that since Dornfest was not a named class representative, his options transactions did not confer standing on Lead Plaintiffs to assert class claims for investors who purchased the same BOA options as did Dornfest.

On August 4, 2011, the district court set a conference for September 7, 2011, ordered Dornfest to appear, and set a briefing schedule for issues to be raised at the conference. From August 26 through September 1, 2011, Lead Plaintiffs, defendants, and Dornfest each submitted a letter brief on Dornfest's application to move to certify the BOA Options Class. (A1227-A1230, A1232-A1234, A1235-A1236) Lead Plaintiffs stated that they did not want to add Dornfest as a Lead Plaintiff, and that Dornfest "should not

be permitted to undermine Lead Plaintiffs' decision not to name him as a class representative by bringing his own separate class action." (A1233)

On September 7, 2011, the district court held a hearing in which it seemed to acknowledge concerns about allowing Lead Plaintiffs to preclude claims for a BOA Options Class (A1237-A1275):

THE COURT: And since there would be, by definition, no overlap with the claims you've [Lead Plaintiffs] asserted, I'm having difficulty seeing how I could say you [Dornfest] can't bring a class certification motion. What he can't do is he can't say, your Honor, I'm moving, I want to be in the consolidated securities class action and I want to be one of the named plaintiffs. I agree with you. You are the fiduciaries for the class. You may not want this person in your class action. He may, for whatever reason, bring down the value of your claims, and I think you as representatives of lead plaintiff have the right to exclude him from your action.

* * *

Just as somebody's come in with derivative claims, they're in the MDL. The lead plaintiffs in the securities class action couldn't say we think it's disadvantageous that there be derivative claims in the MDL. We want to shut them down, we want to shut down the ERISA claims that were previously asserted. I don't think you can do that. (emphasis added)

(A1263-A1265)

At the September 7, 2011 hearing, the district court directed that the parties submit additional letter briefs. (A1273) From September 14 through 23, 2011, Lead Plaintiffs (A1478-A1480) and defendants (A1285-A1292)

each submitted a letter brief, and Dornfest submitted an opening and reply letter brief. (A1276-A1284, A1481-A1487)

On September 29, 2011, the district court issued its Order (A1488-A1492), holding that Dornfest was precluded from moving to certify a “class of [BOA] options holders” (A1492), reasoning, *inter alia*, that “[f]or the purposes of securities fraud action brought under the PSLRA, this distinction [between claims for which Lead Plaintiffs have standing, or lack standing], is not meaningful.” (A1491)

On October 13, 2011, Dornfest filed in this Court a Petition for Permission to Appeal Pursuant to Federal Rule of Civil Procedure 23(f) seeking leave to appeal from the district court’s September 29, 2011 order precluding him from moving to certify claims on behalf of a class of BOA option investors, or, alternatively, for a writ of mandamus. (A1493-A1513) Both Lead Plaintiffs and Defendants opposed Dornfest’s petition. (A1514-A1540, A1541-A1555)

On March 21, 2012 (A1571-A1572), this Court (i) dismissed Dornfest’s petition, without prejudice to Dornfest’s right to seek certification of an interlocutory appeal under 28 U.S.C. § 1292(b), because the district court’s September 29, 2011 order precluding Dornfest from moving to certify the BOA Options Class “was not an ‘order granting or denying class-

action certification” and (ii) denying the writ of mandamus because “the extraordinary circumstances that would warrant” mandamus were not demonstrated. (A1572)

On March 27, 2012, Dornfest moved the district court for certification of an interlocutory appeal under 28 U.S.C. § 1292(b) from the district court’s September 29, 2011 Order. (A1573-A1594) On April 16, 2012, the district court denied Dornfest’s motion. (A1614-A1617)

On April 9, 2013, the district court entered a Judgment Approving Class Action Settlement (“Judgment”). (A2009-A2022) The Judgment incorporated by reference a Stipulation of Settlement (“Stipulation”), filed on November 30, 2012 (A1620-A1840), which provided:

...this Stipulation is intended by the Parties hereto to fully, finally and forever compromise, settle, release, resolve, relinquish, waive, discharge and dismiss with prejudice, the above-captioned consolidated securities class action (the “Action”) and all claims asserted against all Defendants therein, and all Released Claims (defined below) as against the Releasees (defined below).

(A1621)

Because Dornfest’s Complaint was consolidated with and into the Securities Action, the Judgment dismissing Dornfest’s Complaint was with prejudice. Other than the claims belonging to January 2011 Leap Option purchasers, all other BOA Options Class claims were left untouched. The

certified class entitled to recovery in the Class Action Settlement included only common stock purchasers and the January 2011 Leap Option purchasers.

STATEMENT OF FACTS

Dornfest verified his investment in 17 different BOA options and his incurred losses of \$382,890. (A830) Dornfest did not invest in the January 2011 Leap Option included in the class in the Securities Action, and was, therefore, excluded from any recovery in the Securities Action for his BOA options.

Dornfest's individual damages precluded him from pursuing his claims unless permitted to do so on a class-wide basis. For example, Lead Plaintiffs' counsel's fee application (A1923-A2003) stated that Lead Plaintiffs:

- expended over 193,500 hours prosecuting this action on behalf of the class (A1990);
- incurred, through January 31, 2013, a lodestar value of more than \$88 million (A1990);
- incurred over \$8 million in expenses (A1998) (including over \$4.4 million in expert and consultant expenses) (A1999);

- reviewed approximately 3,803,000 pages of documents produced by Defendants (A1954);
- exchanged 17 opening and rebuttal expert reports with Defendants (A1954); and
- took part in 61 depositions. (A1927)

SUMMARY OF ARGUMENT

The district court erred when it concluded that whether Lead Plaintiffs had, or lacked, standing to assert the claims, was “not meaningful.” (A1491). The constitutional requirement of standing is not only “meaningful,” it is paramount. No court has ever held that a litigant, without standing to assert a claim, has the authority to manage, compromise or terminate another litigation asserting that claim. Yet, that is precisely what the district court held here: that Lead Plaintiffs could prevent Dornfest from seeking to certify the BOA Options Class despite the critical fact that Lead Plaintiffs lacked standing to assert those claims. *See* POINT I-A, *infra*.

The district court erred when it ruled that considerations such as the purported policies behind the Private Securities Litigation Reform Act (the “PSLRA”) – efficiency, convenience, concern about lawyer-driven litigation, and the avoidance of a multiplicity of actions – should, and could, trump constitutional standing and precluded Dornfest from moving to certify

the BOA Options Class. (A1489-A1491) The district court's error was founded in its unsupported notion that the PSLRA mandated the prosecution of only a single securities class action arising out of a single factual predicate, such as the BOA acquisition of Merrill Lynch. Under this scenario, an appointed lead plaintiff would not only manage the class of securities investors for which it had standing, but would also decide the fate of investors outside of the class with whom the lead plaintiff had no cognizable legal relationship.

Nothing in the PSLRA empowers a court to bestow upon Lead Plaintiffs standing or the authority to preclude the assertion of other separate and distinct class claims, as to which Lead Plaintiffs lacked constitutional standing.³ This erroneous decision to elevate the policies purportedly underlying the PSLRA over constitutional standing had direct and adverse consequences: it permitted Lead Plaintiffs to prosecute the January 2011 Leap Option claims, while, at the same time, rendering worthless all other BOA Options Class claims. The PSLRA does not authorize, contrary to the

³ Indeed, one can readily imagine a scenario where an options investor or preferred shareholder suffers a massive loss and is appointed lead plaintiff. If such plaintiff does not also own common shares, the holding of the district court would permit that plaintiff to prevent purchasers of common shares from seeking any class recovery.

Constitution, lead plaintiffs to bar class claims over which lead plaintiffs lacks standing. *See* Point I-B, *infra*.

STANDARD OF REVIEW

The standard of review for all issues is *de novo*. *Abrahamson v. Bd. of Education*, 374 F.3d 66, 71 (2d Cir. 2004). *See also City of Pontiac Gen. Employees' Ret. Sys. v. MBIA, Inc.*, 637 F.3d 169, 173 (2d Cir. 2011); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 106, n.12 (2d Cir. 2005).

ARGUMENT

AFTER HOLDING LEAD PLAINTIFFS LACKED STANDING TO REPRESENT THE BOA OPTIONS CLASS, THE DISTRICT COURT ERRED BY PRECLUDING DORNFEST FROM MOVING TO CERTIFY THAT CLASS

A. The District Court Erred in Holding That Lead Plaintiffs' Lack of Standing was "Not Meaningful"

The district court erred when, despite Lead Plaintiffs' lack of standing, it empowered Lead Plaintiffs to squelch Dornfest's right under the Federal Rules to seek class certification of claims which he, and not Lead Plaintiffs, had standing to pursue. A lead plaintiff's authority to determine the boundaries of its claims, and its "control over the litigation as whole", may be co-extensive with a lead plaintiff's standing to pursue such claims, but never greater. The district court's ruling that a lead plaintiff had

authority to control all securities claims, including those it lacked standing to pursue, was erroneous.

Although Lead Plaintiffs might have been highly interested in whether or not Dornfest could represent the BOA Options Class, Lead Plaintiffs were, without standing, no more than “concerned bystanders” without a legally cognizable interest. As the Supreme Court recently stated in *Hollingsworth v. Perry*, ___U.S.____, 133 S. Ct. 2652, 2663, 186 L.Ed. 2d 768, 780 (June 26, 2013):

Article III standing "is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests.'" *Diamond*, 476 U. S., at 62, 106 S. Ct. 1697, 90 L. Ed. 2d 48. No matter how deeply committed petitioners may be...or how "zealous [their] advocacy," *post*, at 4 (KENNEDY, J., dissenting), that is not a "particularized" interest sufficient to create a case or controversy under Article III. *Defenders of Wildlife*, 504 U. S., at 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351, and n. 1.

The district court held that Lead Plaintiffs lacked standing to assert claims for a BOA options class (save a single option, the January 2011 Leap Option). As a result, Lead Plaintiffs lacked the ability to make decisions on behalf of investors in those options, including deciding that no BOA Options Class should be certified. See *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9, 17 (2d Cir. 1981) (“The most fundamental principles underlying class actions limit the powers of the representative

parties to the claims they possess in common with other members of the class.”). *See also Horizon Asset Mgt. Inc. v. H & R Block*, 580 F.3d 755, 764 (8th Cir. 2009) (“once it was clear that Horizon would not pursue the derivative claims, it was error for the district court to abide by its decision to appoint Horizon as the sole lead plaintiff to prosecute a single consolidated complaint”). The district court’s decision erroneously disregarded the bedrock constitutional requirement of standing and should be reversed.

B. Nothing in the PSLRA Cures Lead Plaintiffs’ Lack of Standing

Nothing in the PSLRA gives a lead plaintiff without standing the power to prevent other class claims from being asserted. Notably, Section 27 of the PSLRA refers to a lead plaintiff’s authority only with respect to the particular class that it represents. For example, the PSLRA provides that:

Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion *made by a purported class member* in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and *shall appoint as lead plaintiff the member or members of the purported plaintiff class* that the court determines to be most capable of adequately *representing the interests of class members* (hereafter in this paragraph referred to as the “most adequate plaintiff”) in accordance with this subparagraph.

15 U.S.C. § 78 u-4 a(3)B(i) (emphasis added). Nothing in the PSLRA supported the district court’s holding that a lead plaintiff’s authority

extended to any other litigation or any other class, other than the class a lead plaintiff was appointed to represent.

Any issue of “inconvenience” or efficiency cannot confer upon Lead Plaintiffs authority to preclude claims that they lacked standing to assert. As the Supreme Court noted, matters of convenience and efficiency cannot empower a court to hear an action where standing is absent:

[W]e must put aside the natural urge to proceed directly to the merits of this important dispute and to “settle” it for the sake of convenience and efficiency. Instead, we must carefully inquire as to whether appellees have met their burden of establishing that their claimed injury is personal, particularized, concrete, and otherwise judicially cognizable.

Raines v. Byrd, 521 U.S. 811, 820 (1997); *see also Hollingsworth, supra*.

The district court’s concern that permitting Dornfest to seek class certification would engender “a corresponding ecosystem of separate class actions” (A1491) was misplaced. In most cases, the lead plaintiff will have standing (such as to set the time periods for a class), or the lead plaintiff will add other plaintiffs so that the class has standing (*e.g., Hevesi, supra*, 366 F.3d 70). Only in the unusual instance presented here, where Lead Plaintiffs decline to represent (what they have conceded is) a viable class of investors, will it make sense to have a separate, coordinated class.

The district court erroneously held that the distinction between (a) Lead Plaintiffs’ decision about which disclosure claims to bring, or the

temporal parameters of the class period, and (b) Lead Plaintiffs' decision that no one could assert claims for which Lead Plaintiffs lacked standing, was "not meaningful." (A1491)

Dornfest contends that because claims on behalf of options holders were dismissed on standing grounds, options holders should be evaluated differently than shareholders who fall outside of the class period or do not have a given disclosure claim brought on their behalf. For the purposes of a securities fraud class action brought under the PSLRA, this distinction is not meaningful.

(Id.)

The district court's September 29, 2011 (A1488-A1492) order quoted (at A1491) from Dornfest's letter brief (A1276-A1283, at A1279) that a lead plaintiff could determine the date range of the class, the particular claims asserted, the disclosures alleged to be false, and which persons should be named as individual defendants. However, the order stopped short. The District Court ignored Dornfest's next sentence that expressly addressed standing (A1279):

On the other hand, where the lead plaintiff does not represent the particular securities at issue (i.e., investors in Dornfest's seventeen options) because it lacks standing to do so, it has no authority to determine the fate of the claims these security investors may have (emphasis added).

In fact, as best we have been able to determine, no court has ever held that, where the lead plaintiff lacked standing to assert a claim, the lead

plaintiff nevertheless could preclude class certification for the very claim that the lead plaintiff lacked standing to assert.

The district court's reliance on then District Judge Chin's April 9, 2010 Order (A970-A975) was misplaced. In preliminarily holding that Dornfest could pursue his claim individually,⁴ then District Judge Chin explicitly permitted Lead Plaintiffs the opportunity to bring those claims (A974), apparently assuming Lead Plaintiffs' standing. That order never held that if Lead Plaintiffs lacked standing (and chose not to add additional named plaintiffs who had standing), they nevertheless could preclude another plaintiff with standing from pursuing a class claim.

In contrast to the outcome here, in cases in which a lead plaintiff was found not to have standing to bring certain claims, courts have permitted other investors with standing to bring separate, related class actions so that these investors could have their claims adjudicated. *E.g., IndyMac Mortgage-Backed Sec. Litig.* No. 9 Civ. 4583 (LAK), 2011 WL 2508254, at *3-4 (June 21, 2011 S.D.N.Y.); *In re Lehman Bros. Sec. and ERISA Litig.*,

⁴ As we repeatedly represented to the district court (A1281), in a case where Lead Plaintiffs spent over \$8 million in expenses, among other things, Dornfest's individual claims, while in excess of \$300,000, were not large enough to litigate and try individually. *See Italian Colors Rest. v. Am. Express Travel Related Servs. Co.*, 667 F.3d 204 (2d Cir. 2012) *rev'd on other grounds Am. Express Co., v. Italian Colors Rest.*, 133 S.Ct. 2304 (2013).

No. 08 Civ. 6762 (LAK), 2011 WL 1453790 (April 13, 2011 S.D.N.Y.); *see also California Public Employees Retirement System v. The Chubb Corp.*, Civ. No. 00-4285 (GEB), 2002 U.S. Dist. LEXIS 27189, at 83-91 (D.N.J. 2002) (finding that where the initial class plaintiff lacked standing to assert certain securities claims, a new plaintiff with standing could assert the class claims). None of those cases held that lead plaintiffs, bereft of standing to pursue certain new claims, could preclude another plaintiff with standing from asserting those class claims.

The district court's citation (A1489-A1490) to *Hevesi v. Citigroup Inc.*, 366 F.3d 70 (2d Cir. 2004) failed to support its Order. In *Hevesi*, a lead plaintiff was given permission to avoid standing concerns by inviting additional class representatives to join that lead plaintiff's case. *Hevesi* did not hold (or even consider) the converse, namely, whether a lead plaintiff, after determining not to cure its standing deficiencies by adding additional named plaintiffs, was empowered to preclude another plaintiff with standing from bringing a class action for the claims that the lead plaintiff lacked standing to assert.

Hevesi stated, in a footnote, that it would be inefficient to have more than one plaintiff for the "same class." *Hevesi*, 336 F.3d at 82 n.13. *Hevesi* rejected the "requirement" that a different lead plaintiff be appointed "to

bring every...claim” (emphasis added). However, *Hevesi* never held that should a lead plaintiff decline to add another plaintiff to acquire standing for a claim, the plaintiff with standing to assert that claim was just out of luck. *Hevesi* never held that a lead plaintiff without standing was empowered to bar the plaintiff with standing from asserting class claims.

The concerns expressed by this Court in *Hevesi* and by the district court may be legitimate concerns, but, as a practical matter, were not present in this case. Indeed, the district court cited no instance in which, in any case, a ruling that a lead plaintiff lacked standing to assert claims for certain securities spawned another related class action, let alone an entire “eco-system” of such actions. In most every case, lead plaintiffs have welcomed plaintiffs who provided lead plaintiffs with additional standing. *See, e.g., In re Citigroup Inc. Sec. Litig.*, No. 07-Civ-09901 (SHS) (S.D.N.Y.); *In re Merrill Lynch & Co. Inc. Sec., Derivative and ERISA Litig.*, 07-Civ-09633 (JSR) (S.D.N.Y.); *Miller v. Wachovia*, No. 09-Civ-06351 (RJS) (S.D.N.Y.); and *In re Royal Bank of Scotland Group PLC Sec. Litig.*, No. 09-Civ-00300 (DAB) (S.D.N.Y.)

As noted, *Hevesi* did not consider or address the particular circumstances present here and in *Chill v. Green Tree Financial Corp.*, 181 F.R.D. 398, 405-8 (D.Minn. 1998), where lead plaintiffs determined not to

undertake a plaintiff with standing. As in *Chill*, the lead plaintiff for the stock class was permitted to decline to add a plaintiff with standing to assert the options claims. The stock lead plaintiff's choice not to assert the options claims in *Chill* did not permit preclusion of the options class, but rather warranted a parallel options class.⁵ The same result should have been realized here. The district court should not have permitted the pendency of the Securities Action, headed up by Lead Plaintiffs with no standing to assert all of the BOA Options Class claims, to bar Dornfest, the plaintiff with standing to pursue those claims, from pursuing a separate coordinated class action.⁶

⁵ Compare A1261-A1262 at which lead counsel said that Dornfest's supposed "unusual trading" might result in Lead Plaintiffs losing their "credibility" on their class motion, and *Chill*, 181 F.R.D. at 405 (where despite "potential prejudice [against the Stock Actions] posed by the additional legal hurdle for the Plaintiffs who seek compensation for option losses", a separate options class action was permitted). In subsequent briefing, Lead Plaintiffs declined to endorse that previously articulated concern and said only that they had concluded that Dornfest was not an "appropriate" lead plaintiff. Lead Plaintiffs failed to provide any explanation for their conclusion. For example, in Lead Plaintiffs' September 1, 2011 letter (A1232-A1234), they claim Dornfest would "interfere with Lead Plaintiffs' ability and authority to manage the Consolidated Securities Actions." (A1233) In a September 21, 2011 letter (A1478-A1480), Lead Plaintiffs claim Dornfest will disrupt "the litigation and Lead Plaintiffs' strategy." Neither of those "considerations" warranted the issuance of the district court's September 29, 2011 order precluding Dornfest from moving to certify the BOA Options Class.

⁶ In addition, where, as here, a district court used its power "to prevent a party from filing pleadings, motion or appeals authorized by the Federal

This Court should not endorse a lead plaintiff's sacrifice of claims it never had standing to assert. The ruling that Dornfest could not make a class motion overextended a lead plaintiff's PSLRA mandate, especially where, as here, at various times, Lead Plaintiffs determined that class option claims were viable and should be asserted and did assert them.

While the September 29, 2011 order focused on the policy of deterring "lawyer-driven litigation" (A1491), the district court made no record regarding Dornfest, and appeared to give no weight to the facts that: (i) Mitchell had, at most, a loss of less than \$3,000, less than 1% of Dornfest's loss; (ii) following a year of investigation, Lead Plaintiffs (in their Second Amended Complaint) affirmatively asserted BOA Options Class claims thus conceding such claims' viability (A1040); (iii) Lead Plaintiff Mitchell was found to have no standing to assert any claim other than the January 2011 Leap Option claim (A1225); and (iv) the BOA Options Class was barred from the opportunity to participate in what turned

Rules of Civil Procedure," it has plainly committed reversible error. *Cheney v. United States District Court*, 542 U.S. 367, 380-81 (2004) ("district judge usurped power when she prevented [defendants] from filing a motion for leave to amend their answer"); *Richard Greenshields Securities, Inc. v. Lau*, 825 F.2d 647, (2d Cir. 1987) "Absent extraordinary circumstances, such as a demonstrated history of frivolous and vexatious litigation, or a failure to comply with sanctions imposed for such conduct, a court has no power to prevent a party from filing pleadings, motions or appeals authorized by the Federal Rules of Civil Procedure." (citations omitted)).

out to be a substantial recovery⁷ obtained for the stock and leap options class because Dornfest was precluded from moving for class certification.

Different class actions can readily be coordinated. In this case, the district court did a superlative job managing two different class actions (stock and ERISA) along with a derivative action and a number of individual actions. Coordination of one additional class action would not have been an insurmountable hurdle⁸ and was not a reason to prevent a whole class of investors from having their claims heard.

CONCLUSION

For the foregoing reasons, the Judgment should be modified insofar as it dismissed the claims of plaintiff Charles Dornfest and denied his right to move to certify a BOA Options Class.

Dated: August 2, 2013
New York, NY

⁷ The Securities Action settled for \$2.425 billion in cash and other non-cash consideration. (A1872)

⁸ Prosecution of claims on behalf of an options class should not require any repetition of discovery taken in the Securities Action. For an options class, effective cooperation among the parties should result in little, if any, additional discovery.

RESPECTFULLY SUBMITTED,
BRAGAR EAGEL & SQUIRE, P.C.

By: /S/ Raymond A. Bragar
Raymond A. Bragar
Jeffrey H. Squire
Lawrence P. Egel
885 Third Avenue, Suite 3040
New York, New York 10022
(212) 308-5858 (ph)
(212) 486-0462 (fax)
bragar@bespc.com

ABBHEY SPANIER, LLP

By: /S/ Judith L. Spanier
Judith L. Spanier
212 East 39th Street
New York, New York 10016
(212) 889-3700 (ph)
(212) 684-5191 (fax)
jspanier@abbeyspanier.com

Attorneys for Plaintiff-Appellant
Charles Dornfest

SPECIAL APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE: BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

Master File No. 09 MD 2058 (PKC)

MEMORANDUM AND ORDER

THIS DOCUMENT RELATES TO:

CHARLES N. DORNFEST,

Plaintiff,

10 Civ. 275 (PKC)

-against-

BANK OF AMERICA CORPORATION, et al.,Defendants.
-----X

P. KEVIN CASTEL, District Judge:

The Court previously dismissed all but one claim purportedly brought on behalf of purchasers of call options and sellers of put options on the grounds that the named, class plaintiffs in the consolidated action were without Article III standing to pursue claims directed to stock options. In re Bank of America Corp. Sec., Derivative, and Emp. Ret. Income Sec. Act (ERISA) Litig., 2011 WL 3211472, at *12-14 (S.D.N.Y. July 29, 2011). Plaintiff Charles Dornfest, an options holder, has brought a securities fraud action against defendant Bank of America Corporation ("BofA").

Dornfest also seeks to represent a class of investors who held Bank of America options during the class period of September 15, 2008 through January 22, 2009. (Dornfest Compl. ¶ 1.) The lead plaintiffs oppose his effort to bring these claims as a class action. Dornfest argues that because the lead plaintiffs no longer assert claims on behalf of options

holders, and because none of the named, class plaintiffs have standing to pursue such claims, Dornfest may properly bring claims on behalf of options holders as a separate class action.

The Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(3)(B)(i) (the “PSLRA”), provides that a court “shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the ‘most adequate plaintiff’)” Under the PSLRA, “the most adequate plaintiff” acts “as lead plaintiff for the consolidated actions.” *Id.* § 78u-4(a)(3)(B)(ii). “The theory of these provisions was that if an investor with a large financial stake in the litigation was made lead plaintiff, such a plaintiff – frequently a large institution or otherwise sophisticated investor – would be motivated to act like a ‘real’ client, carefully choosing counsel and monitoring counsel’s performance to make sure that adequate representation was delivered at a reasonable price.” *In re Razorfish, Inc. Sec. Litig.*, 143 F. Supp. 2d 304, 307 (S.D.N.Y. 2001); ; accord *In re Donnkenny Inc. Sec. Litig.*, 171 F.R.D. 156, 157 (S.D.N.Y. 1997) (Cedarbaum, J.) (the PSLRA’s lead plaintiff provision “was intended to ensure that institutional plaintiffs with expertise in the securities market and real financial interests in the integrity of the market would control the litigation, not lawyers.”).¹

In *Hevesi v. Citigroup Inc.*, 366 F.3d 70, 82 n.13 (2d Cir. 2004), Judge Cabranes, writing for the panel, observed that the PSLRA’s lead plaintiff provision “empower[s] one or several investors with a major stake in the litigation to exercise control over the litigation as a whole.” As noted by *Hevesi*, the PSLRA does not require the selection of lead plaintiffs

¹ In this case, then-District Judge Chin, to whom this action was previously assigned, concluded that the State Teachers Retirement System of Ohio, the Ohio Public Employees Retirement System, the Teachers Retirement System of Texas, Stichting Pensioenfondszorg en Wilzijn and Fjarde AP-Fonden would serve as lead plaintiffs. (Docket # 2, at 10-17.)

“with standing to sue on every available cause of action,” and permits “the addition of named plaintiffs to aid the lead plaintiff in representing a class.” *Id.* at 83. Thus, where a lead plaintiff is without standing to sue on a given claim, the PSLRA allows for a mechanism whereby additional class representatives may be proposed by the lead plaintiff to pursue those claims.

In April 2010, then-District Judge Chin concluded that the lead plaintiffs had authority to decide what claims to assert against which defendants, and held that Dornfest could not commence a separate class action on behalf of options holders. (Docket # 240, at 3-6.) Judge Chin noted, among other things, that a lead plaintiff has “authority to decide what claims to assert on behalf of securities holders,” and that “[p]ermitting other plaintiffs to bring additional class actions now, with additional lead plaintiffs and additional counsel, would interfere with Lead Plaintiffs’ ability and authority to manage the Consolidated Securities Action.” (Docket # 240, at 4-5.) He stated that “the plaintiffs in . . . Dornfest . . . are free to pursue their claims as individual cases – but not as class actions.” (Docket # 240, at 5.)

As previously noted, since Judge Chin’s order, this Court has held that the named, class plaintiffs have standing to bring claims only on behalf of holders of January 2011 call options, and dismissed all other claims on behalf of options holders. 2011 WL 3211472, at *12-14. The lead plaintiffs have not sought leave to add additional class plaintiffs or otherwise attempted to amend the complaint to revive their claims on behalf of options holders. Such tactical decisions are the prerogative of a lead plaintiff. Counsel to lead plaintiffs has stated, both on the record in open court and via letter brief, that they evaluated adding Dornfest as a class representative, and concluded that he was not well suited for that role. (Sept. 21 letter at 2; Sept. 7 Tr. at 24-26.) Such a decision is within the lead plaintiffs’ prerogative “to exercise control over the litigation as a whole.” *Ilevesi*, 366 F.3d at 82, n.13.

Indeed, counsel to Dornfest acknowledge that the lead plaintiffs have the authority and discretion to determine which claims to pursue:

There is no dispute that lead plaintiffs for a class of common shareholders can determine, for example, whether that class should bring a Section 11 claim; whether or not to assert that a certain corporate disclosure was actionable; or whether the class should bring claims against a particular individual. . . . Similarly, if Lead Plaintiffs decide upon a particular date range for the common shareholder class, no other shareholder can bring a class action with respect to different time periods.

(Sept. 14 Letter at 4.) In each of those instances, a lead plaintiff necessarily makes determinations that limit the class of shareholders. Inevitably, any class definition establishes boundaries as to who may recover. Individuals excluded from the class may pursue individual claims, as Judge Chin recognized in his order of April 2010. (Docket # 240, at 5.)


Dornfest contends that because claims on behalf of options holders were dismissed on standing grounds, options holders should be evaluated differently than shareholders who fall outside of the class period or do not have a given disclosure claim brought on their behalf. For the purposes of a securities fraud class action brought under the PSLRA, this distinction is not meaningful. As Judge Cabranes noted in Hevesi, a lead plaintiff may seek to incorporate additional named class plaintiffs in order to resolve any standing concerns. 366 F.3d at 83. In the framework proposed by Dornfest, any consolidated securities fraud class action might then carry with it a corresponding ecosystem of separate class actions seeking relief on behalf of securities holders whose claims vary from the lead plaintiffs. Dornfest's approach invites the type of lawyer-driven litigation that the PSLRA seeks to avoid, and would likely promote near-endless skirmishes about securities holders who fall outside a class definition and the degree to which their exclusion implicates matters of standing.

SPA5

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Therefore, consistent with Judge Chin's ruling of April 2010 and Hevesi, this Court concludes that Dornfest may not assert claims on behalf of a class of options holders. He remains free to pursue his claims individually.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
September 29, 2011

SPA6

~~Case 1:09-md-02058-PKC Document 871 Filed 04/09/13 Page 1 of 85~~

Cabrera, K.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

THIS DOCUMENT RELATES TO:
Consolidated Securities Action

Master File No. 09 MDL 2058 (PKC)

ECF CASE

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4-9-13

JUDGMENT APPROVING CLASS ACTION SETTLEMENT

WHEREAS, a consolidated securities action is pending in this Court entitled *In re Bank of America Corp. Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09 MDL 2058 (PKC) (S.D.N.Y.) (the "Action");

WHEREAS, by Memorandum and Order dated February 6, 2012, this Court certified the Action to proceed as a class action on behalf of a class of investors consisting of: (i) as to claims under Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), all persons and entities who held Bank of America Corporation ("BoA") common stock as of October 10, 2008, and were entitled to vote on the merger between BoA and Merrill Lynch & Co., Inc. ("Merrill"), and were damaged thereby; and (ii) as to claims under Sections 10(b) and 20(a) of the Exchange Act, all persons and entities who purchased or otherwise acquired BoA common stock during the period from September 18, 2008 through January 21, 2009, inclusive, excluding shares of BoA common stock acquired by exchanging stock of Merrill for BoA stock through the merger between the two companies consummated on January 1, 2009, and were damaged thereby; and (iii) as to claims under Sections 10(b) and 20(a) of the Exchange Act, all persons and entities who purchased or otherwise acquired January 2011 call options of BoA from September 18, 2008 through January 21, 2009, inclusive, and were damaged thereby; and (iv) as

to claims under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the “Securities Act”), all persons and entities who purchased BoA common stock issued under the Registration Statement and Prospectus for the BoA common stock offering that occurred on or about October 7, 2008, and were damaged thereby (the “Class”);¹

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation and Agreement of Settlement dated November 30, 2012 (the “Stipulation”);

WHEREAS, pursuant to this Court’s Order dated February 29, 2012, the Notice of Pendency of Class Action (the “Class Notice”) was mailed to potential members of the Class to notify them of, among other things: (i) the Action pending against the Defendants; (ii) the certification of the Action by the Court to proceed as a class action on behalf of the Court-certified Class; and (iii) their right to request to be excluded from the Class, the effect of remaining in the Class or requesting exclusion, and the requirements for requesting exclusion;

WHEREAS, Lead Plaintiffs, the State Teachers Retirement System of Ohio; the Ohio Public Employees Retirement System; the Teacher Retirement System of Texas; Stichting Pensioenfonds Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V.; and Fjärde AP-Fonden, individually and on behalf of the Court-certified Class, and defendants BoA, Merrill, Kenneth D. Lewis, John A. Thain, Joe L. Price, Neil A. Cotty, Banc of America Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, William Barnet III, Frank P. Bramble, Sr.,

¹ Excluded from the Class by definition are: Defendants, present or former executive officers of BoA and Merrill, present or former members of Merrill’s and BoA’s Board of Directors and their immediate family members (as defined in 17 C.F.R. § 229.404, Instructions). Also excluded from the Class are any Persons who previously submitted a request for exclusion as set forth on Appendix 1 to the Stipulation and Agreement of Settlement dated November 30, 2012 who have not opted-back into the Class. All Persons excluded from the Class pursuant to request are set forth on Exhibit 1 hereto.

John T. Collins, Gary L. Countryman, Tommy R. Franks, Charles K. Gifford, Monica C. Iozano, Walter E. Massey, Thomas J. May, Patricia E. Mitchell, Thomas M. Ryan, O. Temple Sloan, Jr., Meredith R. Spangler, Robert L. Tillman, and Jackie M. Ward (collectively, the “Defendants” and, together with Lead Plaintiffs, the “Parties”) entered into the Stipulation, which was approved by additional named plaintiff Grant Mitchell (together with Lead Plaintiffs, the “Class Representatives”), setting forth the terms and conditions of the Parties’ proposed settlement (the “Settlement”);

WHEREAS, by Order dated December 4, 2012 (the “Preliminary Approval Order”), this Court (a) preliminarily approved the Settlement; (b) ordered that notice of the proposed Settlement be provided to potential Class Members; (c) provided Class Members with the opportunity to: (i) opt-back into the Class if they previously submitted a request for exclusion from the Class in connection with the Class Notice, or (ii) object to the proposed Settlement; and (d) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Class;

WHEREAS, the Court conducted a hearing on April 5, 2013 (the “Settlement Hearing”) to consider, among other things, (i) whether the terms and conditions of the Settlement are fair, reasonable and adequate, and in the best interests of Lead Plaintiffs and the other Class Members, and should therefore be approved; and (ii) whether a judgment should be entered dismissing the Action with prejudice as against the Defendants; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, including the objections filed with respect thereto, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction** - The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Class Members.
2. **Incorporation of Settlement Documents** - This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on November 30, 2012; and (b) the Settlement Notice and the Summary Notice, both of which were filed with the Court on February 19, 2013.
3. **Settlement Notice** - The Court finds that the dissemination of the Settlement Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members (a) of the effect of the Settlement (including the Releases provided for therein), (b) of Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, (c) of their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, (d) of their right to opt-back into the Class if they previously submitted a request for exclusion in connection with the Class Notice, and (e) of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), 15 U.S.C. § 77z-1(a)(7), and all other applicable law and rules.

4. **Final Settlement Approval and Dismissal of Claims** - Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the Releases provided for therein, including the release of the Released Lead Plaintiffs' Claims as against the Defendants' Releasees; and the dismissal with prejudice of claims against Defendants), and finds that the Settlement is, in all respects, fair, reasonable and adequate, and is in the best interests of Lead Plaintiffs and the other Class Members. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

5. The Action and all of the claims against Defendants by Lead Plaintiffs and the other Class Members are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

6. **Binding Effect** - The terms of the Stipulation and of this Judgment shall be forever binding on the Defendants, Lead Plaintiffs and all other Class Members (regardless of whether or not any individual Class Member submits a Proof of Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective heirs, executors, administrators, predecessors, successors, affiliates and assigns. The Persons listed on Exhibit 1 hereto are excluded from the Class pursuant to request and are not bound by the terms of the Stipulation or this Judgment.

7. **Releases** - The releases as set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraphs 8 and 9 below, upon the Effective Date of the Settlement, Lead Plaintiffs, Class Representatives, and each of the other Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, affiliates and assigns, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every Released Lead Plaintiffs' Claim against the Defendants and the other Defendants' Releasees and shall forever be enjoined from prosecuting any or all of the Released Lead Plaintiffs' Claims against any of Defendants' Releasees. This Release shall not apply to any Person listed on Exhibit 1 hereto.

(b) Without further action by anyone, and subject to paragraphs 8 and 9 below, upon the Effective Date of the Settlement, each of the Defendants and each of the other Defendants' Releasees, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, affiliates and assigns, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every Released Defendants' Claim against all of the Lead Plaintiffs' Releasees and shall forever be enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Lead Plaintiffs' Releasees. This Release shall not apply to any Person listed on Exhibit 1 hereto.

8. Notwithstanding ¶¶ 7(a) – (b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

9. Notwithstanding ¶¶ 7(a) – (b) above, nothing in this Judgment shall release any of the Excluded Claims (as that term is defined within paragraph 1(uu) of the Stipulation).

10. **Corporate Governance Enhancements** – The Corporate Governance Enhancements as set forth in paragraphs 36 and 37 of the Stipulation are expressly incorporated herein in all respects. Accordingly, this Court orders that:

(a) BoA will, within forty-five (45) days following the entry of this Judgment, implement the following Corporate Governance Enhancements, and will maintain such Corporate Governance Enhancements through the later of January 1, 2015 or eighteen (18) months following entry of this Judgment.

(i) BoA will amend Section 3 of its Corporate Governance Guidelines to read, in relevant part, as follows:

“Majority Voting for Directors. In an uncontested election, a director who fails to receive the required number of votes for re-election in accordance with the Bylaws shall offer to resign. In addition, a director whose resignation is under consideration shall abstain from participating in any recommendation or decision regarding that resignation. The Corporate Governance Committee shall make a recommendation to the Board as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Corporate Governance Committee and the Board, in making their decisions, may consider any factor or other information that they deem relevant. The Board shall act on the tendered resignation, taking into account the Corporate Governance Committee’s recommendation, and shall publicly disclose its decision regarding the resignation and the basis for the decision within ninety (90) days after the results of the election are certified. If the resignation is not accepted, the director will continue to serve until the next annual meeting of stockholders and until the director’s successor is elected and qualified. The Board shall not permit the director to stand for election at the next annual meeting.”

(ii) BoA will amend Section 8 of its Corporate Governance Guidelines to read, in relevant part, as follows:

“Minimum Stock Ownership by Executive Officers and Directors. In order to align the interests of the Company’s executive officers and directors with those of the Company’s stockholders, the Board has adopted the following minimum stock ownership requirements: (a) the Chief Executive Officer shall hold at least 500,000 shares of the Company’s common stock and retain at least 50% of the net after-tax shares from future equity awards until retirement; (b) other executive officers shall hold at least 300,000 shares of the Company’s common stock and retain at least 50% of the net after-tax shares from future equity awards until the ownership guideline is achieved; and (c) non-management directors are required to hold and cannot sell the restricted stock they receive as compensation (except as necessary to pay taxes upon vesting) until termination of their service. The Company shall disclose in its annual proxy statement any failure of any director to comply with the stock ownership guidelines. All full value shares and units beneficially owned by executive officers and directors are included in the calculation; performance contingent shares and units are included in the calculation when earned; and stock options are not included. Newly appointed executive officers will have up to five years to achieve compliance.”

(iii) In connection with the establishment of the Corporate Development Committee, BoA will amend the charter for the Corporate Development Committee to read, in relevant part, as follows:

“Committee Authority and Responsibilities. In carrying out its oversight responsibilities as set forth above, the Committee shall oversee senior management’s establishment of policies and guidelines, to be adopted by the Board, establishing appropriate

systems (including policies, procedures and/or management committees) to ensure that Applicable Transactions are vetted carefully and that adequate due diligence is performed prior to Board approval of any Applicable Transaction. Among other things, the Committee shall ensure that the Chief Executive Officer and the Board are informed with respect to any bonus or incentive compensation agreements with an actual or estimated aggregate value exceeding 5% of the acquisition price at the time the Applicable Transaction is announced, which agreements have been negotiated in connection with an Applicable Transaction and are based on or otherwise related to such Applicable Transaction. In connection with any Applicable Transaction to be submitted to the Board for approval, the Committee shall meet at least once, telephonically or in person, with members of senior management to review management's compliance with applicable policies and procedures related to the Company's consideration of the Applicable Transaction, prior to its presentation to the Board for approval."

(b) BoA will maintain the following corporate governance reforms (agreed to previously with the SEC) through January 1, 2015:

- (i) that all compensation committee members be super-independent;
- (ii) that BoA publish on its website the incentive compensation principles and the requirement that it adhere to them;
- (iii) that BoA have its Chief Executive and Chief Financial Officers certify that they have reviewed all annual and merger proxy statements;
- (iv) that BoA maintain a consultant to the Compensation Committee who would report solely to the Compensation Committee and would be "independent" under all applicable NYSE rules and guidelines concerning compensation consultants; and

(v) that BoA provide shareholders with an annual non-binding "say on pay" with respect to executive compensation.

(c) The Court shall retain jurisdiction until the end-date of the Corporate Governance Enhancements on the later of January 1, 2015 or eighteen (18) months following entry of this Judgment to enforce any of the conditions set forth in this paragraph 10.

11. **Complete Bar Order -**

(a) Any and all Persons are permanently barred, enjoined and restrained, to the fullest extent permitted by applicable law, from commencing, prosecuting or asserting any claim for indemnity or contribution against any Defendants' Releasees (or any other claim against any Defendants' Releasees where the alleged injury to such Person is that Person's actual or threatened liability to the Class or a Class Member in the Action), based upon, arising out of or related to the Released Lead Plaintiffs' Claims, whether arising under state, federal or foreign law, as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere. However, with respect to any judgment that the Class or a Class Member may obtain against such Person based upon, arising out of or relating to any Released Lead Plaintiffs' Claim belonging to the Class or a Class Member, that Person shall be entitled to a credit of the greater of (i) an amount that corresponds to the percentage of responsibility of the Defendants for the loss to the Class or the Class Member or (ii) the amount paid by or on behalf of the Defendants to the Class or the Class Member for common damages.

(b) Except as provided in ¶ 11(d) below, each and every one of Defendants' Releasees is hereby permanently barred, enjoined and restrained, to the fullest extent permitted

by applicable law, from commencing, prosecuting or asserting any claim for indemnity or contribution against any Person (or any other claim against any such Person where the alleged injury to such Defendants' Releasee is that Defendants' Releasee's actual or threatened liability to the Class or a Class Member in the Action), based upon, arising out of or related to the Released Lead Plaintiffs' Claims, whether arising under state, federal, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any other federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere.

(c) Nothing in this Complete Bar Order shall prevent any Person listed on Exhibit 1 hereto from pursuing any Released Lead Plaintiffs' Claim against any Defendants' Releasees. If any such Person pursues any such Released Lead Plaintiffs' Claim against any Defendants' Releasees, nothing in this Complete Bar Order or in the Stipulation shall operate to preclude such Defendants' Releasees from asserting any claim of any kind against such Person, including any Released Defendants' Claims (or seeking contribution or indemnity from any Person, including any co-Defendant in the Action, in respect of the claim of such Class Member who is excluded from the Class pursuant to request as set forth on Exhibit 1 hereto).

(d) Notwithstanding anything in sub-paragraphs 11(a)-(c) above, nothing in the Stipulation or in sub-paragraphs 11(a)-(c) above shall operate to (a) preclude the Defendants' Releasees from asserting any claims against their own insurers; or (b) preclude the Defendants or any other Person from asserting any claims, including claims for contribution or indemnity, against any Person, including any Defendant in this Action, in connection with or arising out of the Excluded Claims (as that term is defined within paragraph 1(uu) of the Stipulation).

12. **Rule 11 Findings** - The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense and settlement of the Action.

13. **No Admissions** - Neither this Judgment, nor the Term Sheet, nor the Stipulation (whether or not consummated) nor the negotiation of the Stipulation, nor any proceedings taken pursuant thereto:

(a) shall be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged by Lead Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees;

(b) shall be offered against any of the Lead Plaintiffs' Releasees, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Lead Plaintiffs' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that if the Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement;

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(d) shall be construed against any of the Lead Plaintiffs' Releasees as an admission, concession, or presumption that any of their claims are without merit, that any of the Defendants' Releasees had meritorious defenses, or that damages recoverable under the Second Amended Complaint would not have exceeded the Settlement Amount.

14. **Retention of Jurisdiction** - Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and/or Litigation Expenses by Co-Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) any motion to approve the Class Distribution Order; and (f) the Class Members for all matters relating to the Action.

15. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Co-Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

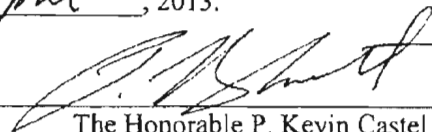
16. **Modification of the Agreement of Settlement** - Without further approval from the Court, Lead Plaintiffs and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Class Members in connection with the Settlement. Without further order of

the Court, Lead Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

17. **Termination** - If the Effective Date does not occur or the Settlement is terminated as provided in the Stipulation, then this Judgment (and any orders of the Court relating to the Settlement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Stipulation. Within fourteen (14) business days after joint written notification of termination is sent by counsel for BoA and Co-Lead Counsel to the Escrow Agent pursuant to the terms of the Escrow Agreement, the Settlement Fund (including accrued interest thereon and any funds received by Co-Lead Counsel consistent with ¶ 19 of the Stipulation), less any expenses and any costs which have either been disbursed or incurred and chargeable to Notice and Administration Costs and less any Taxes paid or due or owing shall be refunded by the Escrow Agent to BoA. In the event that the funds received by Co-Lead Counsel consistent with ¶ 19 of the Stipulation have not been refunded to the Settlement Fund within the fourteen (14) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to BoA immediately upon their deposit into the Escrow Account consistent with ¶ 19 of the Stipulation.

18. **Entry of Final Judgment** - There is no just reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

SO ORDERED this 8th day of April, 2013.



The Honorable P. Kevin Castel
United States District Judge

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EXHIBIT 1**Persons Excluded from the Class Pursuant to Request**

- | | |
|--|---|
| 1. 1976 Real Estate Trust UTA
DTD 12/28/76 FBO Richard
Finger
Houston, TX | 8. Martha B. Adair Revocable Trust,
Barbara A. Roach, Trustee
Boulder, CO |
| 2. The 1991 Jeffrey R. Parker
Family Trust
Englewood, NJ | 9. Melvin L. Adams
Federalsburg, MD |
| 3. The 1994 Drew E. Parker Family
Trust
Englewood, NJ | 10. John R. Agnew
Fort Myers, FL |
| 4. The 1994 Julie P. Mantell Family
Trust
Memphis, TN | 11. Harry J. and Patricia N. Agoff
Tr UA 08-APR-97 Harry J. Agoff
and Patricia N. Agoff Revocable
Trust
San Mateo, CA |
| 5. 2008 SRG Trust
New York, NY | 12. Dene Miller Alden, Trustee
The Dolores E. Miller Trust
Cincinnati, OH |
| 6. Benjamin and Caroline Abrams
Educational Trust
San Francisco, CA | 13. Peter P. Alessandro
Clifton Park, NY |
| 7. Zachary Abrams
San Francisco, CA | 14. Darlene P. Allen (IRA)
Clarksburg, MD |

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- | | |
|--|---|
| 15. Srinivasa R. Allu
Quincy, MA | 23. Donald Arkley
Redwood City, CA |
| 16. Anita L. Altheide TTEE
Charles R. Altheide TTEE
Anita L. Altheide Living Trust
U/A DTD 06/12/97
Hannibal, MO | 24. Robert Arndt
TR UA 07/26/1990
Redington Shores, FL |
| 17. Ambassador Life Insurance
Company
Houston, TX | 25. Margaret Arsenault;
Margaret Arsenault &
Edward Arsenault, JT TEN
Stow, MA |
| 18. Amundi
c/o DRRT
Miami, FL | 26. Anna H. Ashby
Churchville, VA |
| 19. Ronald R. Anderson
Lincoln, NE | 27. James C. Atkins &
Leola T. Atkins
Richmond, VA |
| 20. Wilma Anderson
Keosauqua, IA | 28. Barbara H. Babcock &
Arthur E. Babcock
Carmel Valley, CA |
| 21. Anne Duchess of Westminster's
Charity
Eccleston Chester, England | 29. Richard J. Babiars
Auburn, NY |
| 22. Michel G. Araman &
Adele C. Araman
Buena Park, CA | 30. Robert J. Baldes, Sr.
Albany, NY |

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- | | |
|---|---|
| 31. William Proctor Ball
Grifton, NC | 39. Doreen C. Barrows
Leesburg, FL |
| 32. Grace Louise Baltusnik
Charlotte, NC | 40. Charles R. Bassett
Newton Highlands, MA |
| 33. Banque Genevoise de Gestion SA
on behalf of its clients
Geneve, Switzerland | 41. Gerald D. Bastin &
Wendy Bastin
Arden, NC |
| 34. Barbara Barbaria
San Francisco, CA | 42. Dorothy Anne Bayliss
Charlotte, NC |
| 35. Brian Barbaria
San Francisco, CA | 43. F. James Becher, Jr.
Greensboro, NC |
| 36. Janet D. Barker
Black Diamond, WA | 44. Robert Beck
Boothwyn, PA |
| 37. Melvin K. Barneko &
Alice M. Barneko, JT TEN
Valparaiso, IN | 45. Elizabeth Jeannette Beighau
Temple City, CA |
| 38. John Baron and Etta Baron
Newtown, PA | 46. Fannie Bond Bellamy
Windsor, NC |

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- | | |
|--|---|
| 47. Merle Bellis
Ellensburg, WA | 55. James K. Biggs, Jr.
Houston, TX |
| 48. Verna E. Belmer
Citrus Heights, CA | 56. Emily Boell
Corona, CA |
| 49. Robert Faro Belport & Christine
E. Belport JT TEN
Green Bay, WI | 57. Joan Elaine Boone
Berkeley, CA |
| 50. Melvin Belsky
Alamo, CA | 58. Joseph Borello
New York, NY |
| 51. James Thomas Bengé &
Elizabeth Bengé TR
UA Nov. 18, 1992
The Bengé Revocable Trust
Pryor, OK | 59. Louise M. Botica
Debarry, FL |
| 52. Joyce J. Berdal &
Raymond J. Berdal JT TEN
Madison, WI | 60. Merle Lee Bourn (Roth IRA)
La Grange, IL |
| 53. Janet T. Berrier
Groton, VT | 61. Thomas David Bourne, MD
Charlottesville, VA |
| 54. Mark L. Bigelow
Mifflintown, PA | 62. Margaret A. Bowden (Roth IRA)
North Providence, RI |

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- | | |
|--|---|
| 63. Thomas H. Bowden
North Providence, RI | 71. Iva H. Brown
Nashville, TN |
| 64. Donald C. Boyer
Oakville, IA | 72. Katherine Ann Brown
Litchfield Park, AZ |
| 65. Jeannette Bragg
Enfield, CT | 73. Margaret Brown
Montrose, CO |
| 66. Anne M. Braisted, Trustee
Paul W. Braisted Family Trust
Columbia, MO | 74. Donald Brunell
Walnut Creek, CA |
| 67. James H. Brammer, Jr.
Lynchburg, VA | 75. Lillian F. Brunell
Livingston, NJ |
| 68. Preston R. Branksy &
Zena Bransky
Glencoe, IL | 76. Roy Lewis Bubb
St. Petersburg, FL |
| 69. Sherry Philippet Brewster
Newport, WA | 77. Charles F. Buckland &
Carol J. Buckland
Alexander, NC |
| 70. Adelina M. Bride
Portland, OR | 78. Robert W. Buckner
Floral Park, NY |

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- | | |
|--|---|
| 79. D. Landon Buffington
Smyrna, GA | 87. Ronald Wayne Campbell
Jackson, MI |
| 80. Ilya Burlak
Marlboro, NJ | 88. J. Alex Canepari
Memphis, TN |
| 81. George A. Burton, Jr.
Rocky Mount, NC | 89. Giuseppe Caprio & Eva Caprio
Bologna, Italy |
| 82. Estate of Robert D. Busch
Sunnyvale, CA | 90. Vincent Carlson
Bloomington, IL |
| 83. John A. Bushong
Arlington, VA | 91. The Carnegie Family Trust
U/A DTD 09/02/98
James & Susan Carnegie TTEES
Minden, NV |
| 84. Jean Sueanne Butler
Atlanta, GA | 92. Hilda M. Carter & John M. Carter
(deceased)
Jackson, GA |
| 85. Martha Butterfield
Chattanooga, TN | 93. Bill Sweeney Castillo Trust,
Willard S. Sweeney, Trustee
Roscommon, MI |
| 86. Michael A. Cahoon
Engelhard, NC | 94. Nancy A. Castleberry
Winton, CA |

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- | | |
|--|--|
| 95. Marie G. Catanese
Estero, FL | 103. Hetty Chong &
Russell Chong
Oakland, CA |
| 96. Jane L. Caviglia
Visalia, CA | 104. Razzakul H. Chowdhury
San Luis Obispo, CA |
| 97. Shirley M. Cawley
Aurora, IL | 105. Lenore C. Christel
Manitowoc, WI |
| 98. Caroline Chan
Murrieta, CA | 106. Josephine Ciufo
Greece, NY |
| 99. Carmen Chavez-Lopez
Pico Rivera, CA | 107. Eleanor Clements, Trustee
UA 19-April-95 Eleanor
Clements Living Trust
Norwood, NJ |
| 100. Andrew Cheesman
Newburgh, NY | 108. David R. Clinton
Bullhead City, AZ |
| 101. Frances R. Cherry TTEE
FBO Frances R. Cherry Trust
U/A/D 8/26/91
Spartanburg, SC | 109. Marguerite S. Cockey Dec'd TR
Marguerite S. Cockey Trust
Barbara C. Thompson, Executor
Modesto, CA |
| 102. Chickasaw Foundation
Ada, OK | 110. Cheryl Coddington
Jupiter, FL |

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- | | |
|---|--|
| 111. Philip M. Comerford, Trustee
Trust U/A DTD 4/30/1926 by
Percival Smith Hill II
Naples, FL | 119. Wheirda M. Cooper
Magnolia, AR |
| 112. John Consolo
Hawthorne, NJ | 120. J. Robert Corson
Cottonwood, AZ |
| 113. Frank B. Contratto
Aurora, IL | 121. Harold D. Cox &
Marilyn E. Fisher
Hubbard, OR |
| 114. Glen Dale Conway &
Elvira Conway
St. Louis, MO | 122. Charles K. Craig
Charlotte, NC |
| 115. Robert P. Cook, Jr.
Lafayette, CA | 123. Ann Elizabeth Craven
North Wilkesboro, NC |
| 116. Bruce Cook
Westwood, MA | 124. Cyril E. Crawley
Glocester, RI |
| 117. Charlotte C. Cook (deceased)
Lafayette, CA | 125. Ann Crossland
Pasadena, CA |
| 118. Vergie Cooper
Wilmington, DE | 126. Robert E. Crowder &
Dorothy A. Crowder
TR UA 5/29/91
Crowder Family Trust
Carson City, NV |

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127. Oscar E. Cruz
Pinole, CA

135. Brian L. Daves
Charlotte, NC

128. Thomas L. Curth
Indio, CA

136. Gloria M. Davies
Bryans Road, MD

129. Dade T. Curtis
Dunlap, IL

137. Dorothy M. Davis
Nanjemoy, MD

130. Deanna M. Dack
Oakley, CA

138. Kenneth J. Davis
San Diego, CA

131. Marion E. Dalbey
Grover Beach, CA

139. Martha Ann Davis
Fresno, CA

132. Robert Daniel
Huntington Beach, CA

140. Patricia R. Davis
Manchester, NH

133. Darrow Family Bypass Trust
Elk Grove, CA

141. Thomas Lee Davis
Seal Beach, CA

134. Leslie Lamont Darrow (deceased)
& H. Marie Darrow (deceased) &
their survivors
Elk Grove, CA

142. Bruck Dawit
Annandale, VA

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143. Roy E. Day
Decatur, GA

151. Peter R. Disciascio &
Joyce M. Disciascio, JT WROS
Ocean City, NJ

144. Joyce Kathleen Debusk
Glade Spring, VA

152. Thelma D. Domenicone
San Fernando, CA

145. Anita Degreef
Sint-Pieters-Leeuw, Belgium

153. Betty P. Donohoe
Fairfax, VA

146. Deka International Luxemburg
S.A.
Luxembourg

154. Taso E. Dontchos
Centennial, CO

147. Deka Investment GmbH
Frankfurt, Germany

155. Gertrude M. Doody
Arlington, MA

148. Robert L. Deleeuw
Kalamazoo, MI

156. Kathleen L. Dooley Maley
Indian Trail, NC

149. Estate of Mamie A. Delzell
Pawleys Island, SC

157. William S. Dorsey
Owings Mills, MD

150. Frances A. White DeSear
Brandon, FL

158. Laura Dawn Doscher
Rockville, MD

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159. Helen M. Douglas
Fairport, NY

167. Jason Dupuis
Berlin, MD

160. Dan C. Doyle
Torrance, CA

168. John F. Duran, Jr. &
Ruth M. Duran, JT TEN
Woburn, MA

161. Donie B. Driver
Commerce, GA

169. Elizabeth L. Dyer, TTEE
Elizabeth L. Dyer Rev Trust
UAD 4/27/07
St. Paul, MO

162. Estate of Adeline A. Duecker
Madison, WI

170. Lisa F. Dylan & Gary F. David,
Trustees, David Revocable
Intervivos Trust
Fred David (deceased)
Sacramento, CA

163. Dorothy A. Duffy
Irmo, SC

171. Virgie L. Earl
Sun City Center, FL

164. Dorothy Dufner
Sun Lakes, AZ

172. Alireza Ebrahim (aka Ali R.
Ebrahimi) & Tahereh Jamshidi
Falls Church, VA

165. Walter Dufner
Sun Lakes, AZ

173. Mary L. Edmonds
Union City, CA

166. Burl Duncan
Linville, NC

174. Robert Elkins
New Glarus, WI

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- | | |
|--|--|
| 175. Wayne Ellithorpe, TTEE &
Annette Marie Ellithorpe, TTEE
Prescott, AZ | 183. Estate of Lillian H. Falk
Camp Hill, PA |
| 176. Marlyn S. Eltanal
TR UA 07-OCT-82
Eltanal Family Residual Trust
Scottsdale, AZ | 184. Ernest Farmer &
Caroline W. Farmer
Silver Springs, FL |
| 177. Joyce Empson
Scio, NY | 185. Alvin J. Faulkner
Corinth, TX |
| 178. EOSCO (nominee partnership),
by Margaret K. Gutmann,
General Partner
Middletown, CT | 186. Lorraine Ferrall
Simi Valley, CA |
| 179. Irmgard Erickson
Arlington, VA | 187. Ann S. Ficatier
Poissy, France |
| 180. Frances P. Eriksen
Sun City West, AZ | 188. Jeremy Fineberg
Cedarhurst, NY |
| 181. Susan F. Evans &
Nancy F. Henderek, Trustees
Weston P. Figgins Trust
U/A DTD 2/9/1989
Peabody, MA | 189. Martin Fineberg
Teaneck, NJ |
| 182. James L. Faircloth &
MaeLynn Faircloth
Statesville, NC | 190. Finger Interests Number One,
Ltd.
Houston, TX |

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- | | |
|---|--|
| 191. Richard B. Finger
Houston, TX | 199. Judith M. Flynn
Corvallis, OR |
| 192. Marie M. Fiorella
Glen Rock, NJ | 200. Viola Fogg
North Berwick, ME |
| 193. Walter C. Fisch & Ann G. Fisch,
Joint Acct with Rights of
Survivorship
Savannah, GA | 201. Dan B. Foland
Wilmington, OH |
| 194. Estate of Louis H. Flanders
East Amherst, NY | 202. Bruce Forsberg
Escondido, CA |
| 195. Angela M. Flanery
Louisville, KY | 203. Robert L. Freeman
Allentown, NJ |
| 196. Robert E. Fletcher,
Ramona I. Fletcher
Dixon, CA | 204. Catherine French
Moorestown, NJ |
| 197. Barbara C. Flowers
Wilson, NC | 205. Bonnie Friedman
Cherry Hill, NJ |
| 198. Lonnie L. Floyd, Jr. (deceased)
Forest, VA | 206. Harvey M. Mitnick, as Executor
of the Estate of Nathan A.
Friedman; Nathan A. Friedman
(Rollover IRA)
Haddonfield, NJ |

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207. Nicholas Fung
New York, NY

215. Virginia L. Geck,
St. Georgen, Germany

208. Linda Gaddini, Custodian for
Gregory A. Gaddini
San Francisco, CA

216. Elizabeth Geers Tr.
Revocable Trust UA 12/21/01
Concord, NH

209. John M. Garrett
Atlanta, GA

217. Robert Gegnas
Jupiter, FL

210. Estate of Mary Ann Gates
Atlanta, GA

218. Garit Gemeinhardt
Waxhaw, NC

211. Mary H. Gault, Trustee
Richard H. & Mary H. Gault
Trust
Vassar, MI

219. Dean Gentry
St. Maries, ID

212. Medric Gay
St. Charles, MO

220. J. B. George
Granbury, TX

213. Margaret L. Gear
Sunnyvale, CA

221. Nancy Gerard
Minooka, IL

214. Megan Gebhardt
Lake Ozark, MO

222. Karen Gerstein
Quebec, Canada

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- | | |
|--|--|
| 223. Bernard R. Gervais &
Margaret E. Gervais, Trustees
Yorktown, VA | 231. Patricia Glisson
Riverview, FL |
| 224. Mary M. Gibbs
Cohasset, MA | 232. Eugenia C. Glow
San Diego, CA |
| 225. Kenneth W. Gibson
Gretna, VA | 233. Jill Wender Goldstein
Suffern, NY |
| 226. Shirley S. Gibson
Gretna, VA | 234. Antone R. Gonsalves
New Bedford, MA |
| 227. Deborah Hitchcock Gilbert
Merrimac, MA | 235. Robert J. Goodwin
Rochester, NY |
| 228. Marvel S. Gill Revocable Trust
Marvel S. Gill, Trustee
Meredith Frenette, Secondary
Trustee
Essex, CT | 236. Government of Singapore
Investment Corporation Pte Ltd.
c/o DRRT
Miami, FL |
| 229. Anita Giovannoni
Walnut Grove, CA | 237. Constance C. Govi, Trustee
Govi Residual Trust UA 9-8-06
San Rafael, CA |
| 230. William A. Glenn &
Linda D. Glenn
Carlinville, IL | 238. Constance C. Govi, Trustee
Govi Survivor Trust UA 9-8-06
San Rafael, CA |

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239. Steve Graber
New York, NY

247. Kristin I. Grimes &
Daniel E. Grimes
Las Vegas, NV

240. Beverly Ann Gracia &
Elsie Souza JT TEN
New Bedford, MA

248. Jess Edward Grissom &
Betty Ann Grissom. JTWROS
Texarkana, TX

241. Charles R. Grady
Raleigh, NC

249. Louie Grob, Jr.
Williams, CA

242. Lloyd D. Graham
Knob Knob Noster, MO

250. Richard J. Groleau &
Rosa Lee M. Groleau, Trustees
Richard J. Groleau & Rosa Lee
M. Groleau Revocable Living
Trust Sallisaw, OK

243. William L. Graham
Davie, FL

251. Robin Poston Growley
Charlotte, NC

244. Deanna L. Gratrix
Palmer, AK

252. Charles J. Guenther
Egg Harbor City, NJ

245. John Green
Littleton, CO

253. Susan Jane Gustafson &
Paul Ellis Gustafson JT TEN
Mesa, AZ

246. Frank V. Grimaldi
Belmont, MA

254. Barbara T. Guthneck
Dallas, TX

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255. Dian Gutierrez
Lake Villa, IL

263. Melvin A. Harkins
Bend, OR

256. Betty S. Hair
Chapin, SC

264. Marcella Harris
Glendale, CA

257. The Hamer Living Trust
Robert C. Hamer, TTEE
Lucerne S. Hamer, TTEE
Carpinteria, CA

265. George E. Harrison
Crossville, TN

258. Carl A. Hamill
Moon Township, PA

266. Alice C. Harwick
Fort Worth, TX

259. Jenny Hann
Hillsboro, OR

267. Eugene H. Hasenberg & Ruth E.
Hasenberg Trust
Palm Harbor, FL

260. Helen S. Hansen
Pasadena, CA

268. Tanya M. Hassell
Fort Worth, TX

261. Gary Joseph Hardegger
Salem, OR

269. Winfred K. Hassell
Farmersville, TX

262. Claudia J. Harewood
Mattapan, MA

270. Janice Hawkins &
Norman Hawkins
Sherman, TX

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- | | |
|--|---|
| 271. Norma Louise Hayden Family
Trust UA 22-NOV-88
Norma Louise Hayden, Trustee
Yorba Linda, CA | 279. Roy D. Henrichson & Helen M.
Henrichson, Trustees
Henrichson Trust
Franklin, TX |
| 272. Alice E. Haynes
Medford, MA | 280. Kelly Dyan Hill (Roth IRA)
Concord, NC |
| 273. Steven J. Hays
Kennewick, WA | 281. Gwen F. Hintzen, aka
Gwendolyn Hintzen
Stockton, CA |
| 274. Steven J. Hays TR. UA 05/01/92
Georgia Phillips Hays Irrevocable
Trust
Kennewick, WA | 282. Leo Wesley Hoag (deceased)
Salinas, CA |
| 275. Ernest Headrick
Mira Loma, CA | 283. Lyle A. Hoefer &
Joan M. Hoefer, JTWROS
Littleton, CO |
| 276. Linda Sue Headstream
Katy, TX | 284. Lyle A. Hoefer TOD Joan M.
Hoefer
Littleton, CO |
| 277. Gloria Jean Helms
Chickasha, OK | 285. Wayne Hoelscher
Keller, TX |
| 278. Harriette H. Hendrix
Thomaston, GA | 286. Darlene M. Holben
Highlands Ranch, CO |

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- | | |
|---|--|
| 287. Estate of Harlan H. Holben
Highlands Ranch, CO | 295. HSBC Trinkaus Investment
Managers S.A.
c/o DRRT
Miami, FL |
| 288. Nells S. Hoogendam
New Bern, NC | 296. HSBC Trustee (Singapore)
Limited, as trustee for OPC
Executive
(FUS) Scheme
Singapore |
| 289. Louis Gordon Hooper
Tahoe City, CA | 297. Sarah Hudson
Tyringham, MA |
| 290. R. Hopewell
Riverdale, GA | 298. Chase D. Hughes &
Cathy A. Hughes
Staunton, VA |
| 291. Katherine A. Horvath
Hancock, MI | 299. Marmion Duane Hull
Pacific Palisades, CA |
| 292. Patrick J. Gillbride, Trustee of the
Mildred Mae Howell Trust
Burlingame, CA | 300. Jose Icasiano, Jr.
Vallejo, CA |
| 293. Marcella T. Hoyt
Pennington, NJ | 301. Hiromu Iida
Burbank, CA |
| 294. Doris Hrinda
Gwynedd Valley, PA | 302. International Fund Management
S.A.
Luxembourg |

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- | | |
|--|--|
| 303. Internationale
Kapitalanlagegesellschaft mbH
c/o DRRT
Miami, FL | 311. Peggy E. Jalenak
Memphis, TN |
| 304. Laura A. Iremonger
Pittsburg, CA | 312. Preston and Beverley James
TTEES
Davis, CA |
| 305. Shinichi Ishikawa & Myrna E.
Ishikawa JT TEN
Camden, AR | 313. Vivian L. Jamison
Yoe, PA |
| 306. E. George Iversen (deceased)
Houston, TX | 314. Jax II Inc.
Brooksville, FL |
| 307. Roman & Tracey Iwanczuk
TTEE Iwanczuk Family Trust
dated 10/29/1999
Cradley, United Kingdom | 315. Richard Jazwin & Jan Jazwin
Phoenix, AZ |
| 308. George T. Jackson &
Mildred V. Jackson, Trustees
TR UA March '98
The George and Mildred Jackson
Family Trust DTD 3/18/98
Spring Valley, CA | 316. William H. Jeffress, Jr.
Washington, DC |
| 309. Jalenak Holdings Partnership
Memphis, TN | 317. Estate of Rebecca M. Jenkins
Rehoboth, DE |
| 310. Leo R. Jalenak, Jr.
Memphis, TN | 318. Peggy M. Jennings, TTEE
UA DTD 7/20/01
The Jennings Living Trust
Pollock Pines, CA |

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- | | |
|--|--|
| 319. Norman Jernberg (deceased) &
Kayette C. Jernberg
Carson City, NV | 327. Alphonse I. Johnson &
Veronica E. Johnson
Newark, IL |
| 320. Willy H. Jeromin (IRA)
New London, NH | 328. Lawrence W. Johnson, TTEE
UA DTD 2/5/03
Johnson Family Trust
Rocklin, CA |
| 321. Jerry E. Finger 1976 Childrens
Trust, FBO Walter G. Finger
Houston, TX | 329. Michael D. Johnson
Leo, IN |
| 322. Jerry E. Finger Family Trust
DTD 12/22/89
FBO Walter G. Finger
Houston, TX | 330. Robert B. Johnson &
Portia J. Johnson
Wernersville, PA |
| 323. Jerry E. Finger Family Trust
UTA DTD 12/22/89
FBO Richard Finger
Houston, TX | 331. Roy O. Johnson
Keene, NH |
| 324. Kenneth Alan Jewett, Trustee
Bruce Willits King Family Trust
Nevada City, CA | 332. Cora M. Jones
Coeburn, VA |
| 325. Clarence F. Johnson, Jr.
Harvest, AL | 333. Cora M. Jones &
Herbert Donald Jones (deceased)
Coeburn, VA |
| 326. Averill Ann Johnson Walters
Corpus Christi, TX | 334. Elise U. Jones
Mt. Pleasant, SC |

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- | | |
|---|---|
| 335. Rotha J. Jones
Green Bay, VA | 343. Ellancita Keenum TTEE
Bypass Trust w/ Keenum Family
Living Trust
Farmers Branch, TX |
| 336. Leland D. Jungmeyer &
Betty M. Jungmeyer JT TEN
Lohman, MO | 344. Gary Keierleber &
Beverly Keierleber
Camano Island, WA |
| 337. Carolyn Kachmann
Hilton Head, SC | 345. Frederick C. Kemmerley
Elloree, SC |
| 338. Norman R. Kahant (deceased)
Lake Worth, FL | 346. Peter J. Kennedy (deceased) &
Ethel V. Kennedy JT TEN
Sea Girt, NJ |
| 339. Patricia A. Karsten (Roth IRA)
Boerne, TX | 347. Helen M. Kerbavaz
Richmons, CA |
| 340. Aaron Katz
New York, NY | 348. George A. Keyser
Ramona, CA |
| 341. Joel R. Katz, individually and as
Trustee for Margolin Family
Trust A, Margolin Family Trust
B, and Joel R. Katz Family Trust
New York, NY | 349. Dr. William J. Kinnard, Jr.
Baltimore, MD |
| 342. David Hersholt Kauffman &
Ruth Kauffman, Trustees
Kauffman Family Trust
Dated July 20, 1994
Los Angeles, CA | 350. James R. Klaus
Bristol, PA |

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- | | |
|--|--|
| 351. Lisa Kleback (as beneficiary of
Ruth A. Nagy)
Gainesville, VA | 359. Michael Kurnitz Irrevocable
Living Trust
Harold Kurnitz, Trustee
New York, NY |
| 352. Edward F. Kline, Jr.
La Mesa, CA | 360. Ruth Kurnitz Irrevocable Living
Trust, Harold Kurnitz, Trustee
New York, NY |
| 353. Anne P. Knecht
Emmaus, PA | 361. Pamela Kyu
San Francisco, CA |
| 354. Ken Koch &
Luretta Koch
Lawrenceburg, TN | 362. Gloria C. Ladore
Laconia, NH |
| 355. Rebecca Koraska &
John T. Koraska (deceased)
Tyler, TX | 363. Mary Margaret Lamberson
Monett, MO |
| 356. Yolanda B. Korth
Cypress, TX | 364. Silas B. Langfitt III TTEE
Silas B. Langfitt III
Revocable Trust DTD January
27, 2000
Thomasville, NC |
| 357. Andrew J. Kosinski & Margaret
A. Kosinski
TR UA 5/18/1998
Kosinski Trust
Winter Springs, FL | 365. Lansdowne Developed Markets
Fund Ltd.
c/o DRRT
Miami, FL |
| 358. Loretta M. Kuhn
San Diego, CA | 366. Lansdowne Developed Markets
Fund, L.P.
c/o DRRT
Miami, FL |

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- | | |
|---|---|
| 367. Lansdowne Global Financials
Fund Limited
c/o DRRT
Miami, FL | 375. The JK and MD Lehman Family
Trust, Jack Kiehl Lehman, TTEE
Lacey, WA |
| 368. Lansdowne Global Financials
Fund, L.P.
c/o DRRT
Miami, FL | 376. Derick Harry Leonard
Jacksonville, FL |
| 369. Linda M. LaPointe
Washington, UT | 377. Robert B. Leonard
Ontario, CA |
| 370. Robert H. Largey &
Marguerita Quinn Largey
Union, NJ | 378. Christine Levandusky
West Warwick, RI |
| 371. Charlotte L. Larrick
TR UA 2/25/1990 Charlotte Lee
Larrick Trust
Columbia, MO | 379. Diane Lewis & Gregory W.
Lewis (deceased) IRA
Calabash, NC |
| 372. John Laubach &
Marilyn Laubach
Shelton, WA | 380. Evelyn Ligon
New York, NY |
| 373. Jean K. Lauder &
W. B. Lauder, Jr. (deceased)
Weslaco, TX | 381. F.A. Lingl, M.D.
Chagrin Falls, OH |
| 374. Robert Jay Lee
Flushing, NY | 382. Friedrich A. Lingl, Trustee
Friedrich A. Lingl Trust
Chagrin Falls, OH |

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383. Mildred S. Litt
Albuquerque, NM

391. Lynn Margaret Lovie
The Villages, FL

384. Frances DeJuan Littell
Hugoton, KS

392. Robert John Lovie
The Villages, FL

385. Elaine F. Lizzio &
Elaine F. Lizzio, Trustee
U/A DTD 04/10/02
Elaine F. Lizzio Trust
Pompano Beach, FL

393. Judith A. Lowe
Quebec, Canada

386. Wallace M. Lodine
Medina, WA

394. Alfred H. Lowen & Gertrude E.
Lowen JT TEN (both deceased)
Boca Raton, FL

387. Elizabeth R. Lohman &
Verne D. Lohman
Springfield, OR

395. Gloria J. Loyola
Antioch, CA

388. Emilio M. Lontok
Las Vegas, NV

396. Ida Lu
Rohnert Park, CA

389. Lotte G. Lopez
TOD Carmen L. Bright
Melbourne, FL

397. Louis Lubrano (Roth IRA)
Fairview, NJ

390. Estate of Elsie E. Lore
State College, PA

398. Ruth S. Lugar &
Nancy J. Dixon (both deceased)
JT TEN
Frederick, MD

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- | | |
|---|---|
| 399. Ruth S. Lugar (deceased) &
Linda M. Lugar JT TEN
Frederick, MD | 407. Yanier Marrero & Circe Martinez
Las Vegas, NV |
| 400. Sylvia Luton
Hausville, WA | 408. John G. Marshall &
Wanda M. Marshall
La Habra, CA |
| 401. Virginia M. Lyons
Littleton, CO | 409. David L. Martin &
Lillian M. Martin JT TEN
Concord, VA |
| 402. Danois G. Madrid
Daly City, CA | 410. Ralph B. Martin, Jr.
Hanover, PA |
| 403. Ray C. Magee and Barbara J.
Magee JT TEN
Shelburne, VT | 411. Sebastien Masclet
Zellwood, FL |
| 404. Evan Magruder
New York, NY | 412. Laura Harris Mason
Pittsboro, NC |
| 405. Rima Manookian
Northridge, CA | 413. Patricia A. Mason &
H. Leslie Mason JT TEN
Bradenton, FL |
| 406. Donna Marchetti
Alameda, CA | 414. John P. Mathews and Florence M.
Mathews, TTEES
The John and Florence Mathews
Family Trust
Tiffin, OH |

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- | | |
|---|---|
| 415. Lottie E. Mathews TTEE
Carthage, MO | 423. Marjorie B. McCann
Jericho, VT |
| 416. Melvin F. Matsumoto &
Lynne Reiko Matsumoto
(deceased), Trustees
Lynne Reiko & Melvin F.
Matsumoto Family Trust
U/A DTD 6/12/2001
San Jose, CA | 424. Wilson C. McCarthy
Vienna, VA |
| 417. Dorothy Mauro
Fremont, CA | 425. Edward P. McCool &
Barbara J. McCool, Trustees
McCool Rev Living Trust
UA 3/7/96
Wakefield, RI |
| 418. Elizabeth A. May
Belen, NM | 426. Anne B. McCormick &
John Christopher Speakman
Corvallis, OR |
| 419. Elizabeth A. May, TTEE
U/A DTD 5/01/01
May Family Trust
Belen, NM | 427. Mary A. McCormick, Trustee
Mary A. McCormick
Revocable Trust
Raleigh, NC |
| 420. Nancy C. May, TTEE
The May Family Trust
Arcadia, CA | 428. Ramphan T. McCray
St. Paul, MN |
| 421. Patricia Ann Mayer
Grove City, OH | 429. Mary J. McCrindle
West Park, NY |
| 422. Marie Mazzaferro &
Frank Mazzaferro
Rome, NY | 430. Joy A. McElroy Tr.
UA 24-Mar-88
The McElroy Living Trust
Glendora, CA |

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- | | |
|--|---|
| 431. Alice M. McFadden
Buford, GA | 439. Maria H. Mendes
Boston, MA |
| 432. McGrew Family Revocable Trust,
U/A DTD 8/19/03, James A.
McGrew &
Mary L. McGrew, Trustees
Palatine, IL | 440. Joseph W. Mengel
Chapel Hill, NC |
| 433. Catherine Rae McHaffey
Colorado Springs, CO | 441. George C. Mertel, decedent
Estate of George C. Mertel,
James G. Mertel, Personal Rep.,
& James G. Mertel, as remaining
Joint Tenant
Baltimore, MD |
| 434. Dale J. McKee
Greenwood, MS | 442. Neil Mesick
Willimantic, CT |
| 435. Robert M. McKenzie &
Elaine S. McKenzie JT TEN
Joppatowne, MD | 443. Jean G. Mesropian
Scottsdale, AZ |
| 436. Audrey McQuay
Pacific Palisades, CA | 444. Beatrice J. Michaels
Manorville, NY |
| 437. The MD Lehman Irrevocable
Trust, Jack Kiehl Lehman, TTEE
Lacey, WA | 445. William D. Michaely TTEE
Michaely Living Trust
U/A 9/22/04
Reno, NV |
| 438. Kathleen D. Mello
New Bedford, MA | 446. Joan Letitia Miller Living Trust,
Catherine M. Gray TTEE
UA DTD 7/14/1998
Marion, NC |

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447. Marie B. Miller
Tucson, AZ

455. James K. Moorman &
Joan M. Moorman
Batesville, IN

448. Phyllis Milleville
Orchard Park, NY

456. Michael J. Moravan
Fort Collins, CO

449. Ada Minneci &
Charlene Guarino TTEE
Ada Minneci LVG TR
U/A/D 3-10-04
Rockford, IL

457. Kenneth M. Morrison
Needham Heights, MA

450. Karen K. Mizusaki
Las Vegas, NV

458. Margaret Jane Mugisch
Wyckoff, NJ

451. Laureen K. Mohn
Detroit, MI

459. Joel Munoz
Encinitas, CA

452. MONTANCO (nominee
partnership),
by Margaret K. Gutmann,
General Partner
Middletown, CT

460. Susan L. Murray
South Pasadena, CA

453. Estate of Elizabeth F. Moore
Pennington, NJ

461. Richard L. Muth
Richard L. Muth Family Trust
Mission Viejo, CA

454. Ozella M. Moore
St. Louis, MO

462. Maharaj Muthusamy
St. Louis, MO

- | | |
|---|--|
| 463. David Nagy (as beneficiary of
Ruth A. Nagy)
Leesburg, VA | 471. Mirna M. Neda
New York, NY |
| 464. Ruth A. Nagy
Haymarket, VA | 472. Catherine A. Nelson
Ballwin, MO |
| 465. Edith Naiser
Houston, TX | 473. Kathy J. Nelson
Plainsboro, NJ |
| 466. Shirley Nakagawa & Richard M.
Nakagawa (deceased)
Fresno, CA | 474. Tom E. Nelson III
Austin, TX |
| 467. Donald M. Nash & Geraldine G.
LaBarbera
Tampa, FL | 475. Elvira R. Neuendorf
Jacksonville, FL |
| 468. Albert C. Nassan
Vermontville, NY | 476. Kristin E. Neufeld
Auburn, NY |
| 469. Paul J. Nau
Pisgah Forest, NC | 477. New York State Common
Retirement Fund
Albany, NY |
| 470. Vilma Nau
Pisgah Forest, NC | 478. New York State Teachers'
Retirement System
Albany, NY |

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- | | |
|---|--|
| 479. Angelin N. Newton (IRA)
Dothan, AL | 487. George A. Nurisso (Roth IRA)
Avon, CT |
| 480. Hoang N. Nguyen
Las Vegas, NV | 488. George A. Nurisso (Traditional IRA)
Avon, CT |
| 481. Father Martin Nikodem
Trumbull, CT | 489. George A. Nurisso, Custodian for
George C. Nurisso, UTMA
Avon, CT |
| 482. Janet S. Nishimura
TR UA 29-Dec-92
Janet Shizue Nishimura
Revocable Trust
Honolulu, HI | 490. Beverly J. Obedzinski
Crystal River, FL |
| 483. Janet S. Nishimura
TR UA 29-Dec-92
Masayoshi Nishimura Revocable
Trust
Honolulu, HI | 491. Eileen O'Brien TR
UA 5/06/98
Eileen O'Brien Revocable Trust
Homer Glen, IL |
| 484. Elaine Noreck &
Bernard E. Noreck JT TEN
Shelby Township, MI | 492. Estate of Evelyn Oddivak,
Barbara DeRosa (beneficiary)
New York, NY |
| 485. Mary Louise Novak
Seaford, DE | 493. William R. Oeding &
Barbara P. Oeding
Destin, FL |
| 486. George A. Nurisso
Avon, CT | 494. Susan J. Omlor
Sandusky, OH |

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- | | |
|--|---|
| 495. Estate of John R. Orrick
Towson, MD | 503. William Owen, Jr. & Charity E.
Owen Family Trust
Charity E. Owen, Sole Trustee
William Brian Owen, POA
Yuba City, CA |
| 496. Ann M. O'Shaughnessy
Naples, FL | 504. Violet M. Oyama
Honolulu, HI |
| 497. Ann M. O'Shaughnessy &
Joseph F. O'Shaughnessy
Naples, FL | 505. Richard J. Palicka
Lisle, IL |
| 498. Joseph F. O'Shaughnessy
Naples, FL | 506. Donald M. Papa &
Cleo E. Papa, Trustees
Donald M. Papa & Cleo E. Papa
Trust TR UA 02-04-1993
Cypress, TX |
| 499. Alyce M. Othot
Nashua, NH | 507. The Parker Family
Investments LLC
Englewood, NJ |
| 500. David R. Overfield
Independence, KS | 508. Drew E. Parker
Englewood, NJ |
| 501. Phyllis A. Overmier
Upper Sandusky, OH | 509. Jeffrey R. Parker
Englewood, NJ |
| 502. Jeanne M. Overton &
Annette Papin
Anitoch, CA | 510. Keith Parker
Memphis, TN |

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- | | |
|---|---|
| 511. Michael A. Parker
Englewood, NJ | 519. Dolores A. Pechette TR
UA 3-31-10 Dolores A. Pechette
Revocable Trust
Portland, OR |
| 512. Carolynn P. Parr
Concord, NC | 520. Rosemarie A. Pekarek
Toms River, NJ |
| 513. Charles E. Parramore, Jr.
Camilla, GA | 521. Lester A. Pelkey
Essex, VT |
| 514. Julius Passalacqua & Cecilia M.
Passalacqua, Trustees
UA 10/29/97
The Passalacqua Trust
Willoughby, OH | 522. Joady Boulware Perrett, Trustee
Joe Boulware Trust
U/T/A DTD 1/21/1987
Hendersonville, NC |
| 515. Frances Pastan
Silver Spring, MD | 523. Erik P. Perrin
Daphne, AL |
| 516. Anna Pateka
Baltimore, MD | 524. Richard Petersen &
Mary Alice Petersen TTEE
2002 Petersen Family Trust
Castro Valley, CA |
| 517. Walter G. Paul &
Ruth E. Paul
Hines, OR | 525. Nancy Beth Peterson
Egg Harbor, NJ |
| 518. T. Jay Paxton &
Doris M. Paxton, TTEES
T. Jay and Doris Paxton Trust
Jackson, MI | 526. Ruth B. Phelps
Alhambra, CA |

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- | | |
|---|--|
| 527. Clifford L. Phillips &
Frances Phillips JT WROS
Carbondale, IL | 535. Vincent Plotner
Fayetteville, PA |
| 528. The Piccioni Family 2003 Trust,
UA 10/17/03, Mario Anthony
Piccioni & Marian Louise
Piccioni TTEES
Riverside, CA | 536. Clyde M. Polichetti &
Jo R. Polichetti
Torrance, CA |
| 529. Ingeborg Pierce &
Ingeborg Pierce (IRA)
Hallandale, FL | 537. Norman Portello Trust B,
Jean G. Portello TTEE
Lafayette, CA |
| 530. Leroy E. Pietzsch
Roscoe, TX | 538. Charles Porten, custodian for
Mia Gussen
Weston, CT |
| 531. Bernard E. Pile
Tucson, AZ | 539. Charles Porten, custodian for
Hanna Porten
Weston, CT |
| 532. Nadia Piskaty
Mountain View, CA | 540. Anna Posch Trust, John Posch,
Jo Ann Posch & James H. Posch,
Successor Trustees
Morton Grove, IL |
| 533. James & Elaine Pitenis
Daytona Beach, FL | 541. Susan Povak
Brighton, MA |
| 534. Priscilla C. Piva & George Piva
New Bedford, MA | 542. Barry S. Preis
Ellensburg, WA |

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- | | |
|--|---|
| 543. Mildred L. Priest
Quitman, AR | 551. Saroja B. Rajasekhara
Rajasekhara Family Trust
U/D/T DTD 9/1/2000
Glenwood, MD |
| 544. Profitable Investment Club, by
Charlotte J. Burge, Treasurer
Lorain, OH | 552. Irene A. Randle
TR UA 24-APR-96
The Irene A. Randle Family Trust
Sacramento, CA |
| 545. Public Employees' Retirement
Association of Colorado
Denver, CO | 553. Branko Rapo (deceased)
Matulji, Croatia |
| 546. Donald D. Puett
Overland Park, KS | 554. Michael G. Rebar (deceased)
Des Moines, WA |
| 547. Arnold F. Punt, Sr. &
Johanna Punt TTEES
Arnold F. Punt Sr. Living Trust
UA 01-08-1999
Sioux Center, IA | 555. Beverly Redgwick
Pacific Grove, CA |
| 548. Diana Pyeatt
Carrollton, TX | 556. Fay Reece
Pampa, TX |
| 549. Robert L. Queener &
Darlene M. Queener
TR UA 02-Feb-00
Robert L. Queener Revocable
Living Trust
Port Charlotte, FL | 557. Alice J. Reed
Holt, FL |
| 550. Dorothy Rabb TR
UA 6/21/99 Dorothy Rabb
Revocable Living Trust
Winter Haven, FL | 558. John R. Reed
Holt, FL |

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- | | |
|---|--|
| 559. Barbara J. Reel
Ankeny, IA | 567. Saleeta A. Roberts
Thomaston, GA |
| 560. O. Gene Reising &
Mary L. Reising JTWROS
Evansville, IN | 568. Paul W. Robey
Casey, IL |
| 561. Monte D. & Loa I. Reynolds
Sun City, AZ | 569. Clair A. Robison &
Grace Darlene Robison
San Jose, CA |
| 562. Joseph C. Ridenhour, TTEE
Joseph Ridenhour Revocable
Trust
UA DTD 5-27-2008
Ft. Lauderdale, FL | 570. Robert W. Robisch
Mt. Airy, MD |
| 563. Edwin H. Rider, Jr. TTEE
Gertrude A. Rider TTEE
FBO Rider Living Trust
Vancouver, WA | 571. Michael S. Rodriguez
Tehachapi, CA |
| 564. Flora Rigotti
Portland, OR | 572. Wilbert G. Rohlfen
Windom, MN |
| 565. David L. Riley, Sr. &
Martina D. Riley
Sacramento, CA | 573. Janet Romanowicz
Avon, CT |
| 566. Joseph G. Robert
East Providence, RI | 574. Janet Romanowicz (Roth IRA)
Avon, CT |

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- | | |
|--|--|
| 575. Janet Romanowicz
(Traditional IRA)
Avon, CT | 583. Muriel Adams Sanford
Orono, ME |
| 576. Elizabeth Cleland Ross
(deceased)
Eugene, OR | 584. Jack J. Sapia &
Donna J. Sapia, JT TEN
Miami, FL |
| 577. Betty Rowell
Liberty, TX | 585. Sue Ann Sapiega
Clearwater, FL |
| 578. Sandra Diane Royal
Washington, DC | 586. Lisa B. Sapperstein
Washington, DC |
| 579. Louis Ruffini &
Barbara H. Ruffini as TTEES,
92 Louis & Barbara Ruffini REV
TR UA DTD 4/30/92
Rocklin, CA | 587. Tim Sass
Wayne, PA |
| 580. Eugene M. Salute
Encino, CA | 588. Edward J. Saylor & Lorraine M.
Saylor (deceased)
Puyallup, WA |
| 581. Emilia B. Salvi & Alberto Salvi
San Francisco, CA | 589. Nancy H. Scharber
Winchester, TN |
| 582. Mariann Sandberg
Addison, TX | 590. Ethel Maxine Scher
Enumclaw, WA |

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- | | |
|---|---|
| 591. Ronald R. Schlemer
Denton, MD | 599. Schwab Dividend Equity Fund
San Francisco, CA |
| 592. Gary Schlierf
San Diego, CA | 600. Schwab Financial Services Fund
San Francisco, CA |
| 593. Anna L. Schoenly & Richard D.
Schoenly
Potomac, MD | 601. Schwab Fundamental US Large
Company Index Fund
San Francisco, CA |
| 594. William A. Schultes &
Patricia D. Schultes
Kerrville, TX | 602. Schwab Institutional Select S&P
500 Fund
San Francisco, CA |
| 595. Lois G. Schumann
Maquoketa, IA | 603. Schwab Investments
San Francisco, CA |
| 596. Schwab 1000 Index Fund
San Francisco, CA | 604. Schwab MarketTrack Balanced
Portfolio
San Francisco, CA |
| 597. Schwab Capital Trust
San Francisco, CA | 605. Schwab MarketTrack Growth
Portfolio
San Francisco, CA |
| 598. Schwab Core Equity Fund
San Francisco, CA | 606. Schwab Premier Equity Fund
San Francisco, CA |

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- | | |
|---|--|
| 607. Schwab S&P 500 Index Fund
San Francisco, CA | 615. Helen E. Seim
Walnut Creek, CA |
| 608. Schwab S&P 500 Index Portfolio
San Francisco, CA | 616. Select Investors Exchange Fund,
L.P.
Houston, TX |
| 609. Schwab Total Stock Market Index
Fund
San Francisco, CA | 617. Michael Serko, Jr. &
Agnes Serko, JT TEN
Endwell, NY |
| 610. Larry E. Scott & Laurelee M.
Scott
Goodyear, AZ | 618. Mary Jane Seth
Baltimore, MD |
| 611. Otis T. Scott
Fort Myers, FL | 619. William Doyle Shaffer
Fremont, OH |
| 612. Jean L. Scovell
York, PA | 620. Steven L. Shapiro as Custodian
for Stacy Shapiro UGMA and
Marcy Shapiro UGMA
Cherry Hill, NJ |
| 613. Dorothy C. Seaton
Dublin, GA | 621. Thomas J. Sharkey, Jr.
Watchung, NJ |
| 614. Estate of Richard Seidenberg
Cherry Hill, NJ | 622. Robert J. Shaw
Montreat, NC |

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623. Mary L. Shay Revocable Living
Trust UAD 11/21/02
Mary L. Shay, TTEE
Bradenton, FL

631. Philip J. Sinrich
Deborah A. Sinrich JT WROS
Stoughton, MA

624. Elizabeth Shuck
Bridgeport, CT

632. Linda D. Sinz
Elk Grove, CA

625. Ramon E. Shultz
Bullhead City, AZ

633. Anthony A. Sirco
Albuquerque, NM

626. Carolyn H. Shumway
Lighthouse Point, FL

634. Robert K. Skelding &
Patricia A. Skelding, TTEE
Skelding Family Trust
Cadillac, MI

627. Harry D. Sigler (deceased)
Mission Hills, CA

635. Nicholas A. Skinner
Stowe, VT

628. Harry D. Sigler (deceased) &
Bonnie L. Sigler JT TEN
Mission Hills, CA

636. Leigh Skipper
Willow Grove, PA

629. Rita B. Sigman
Tequesta, FL

637. RuthAnn Harper Skowronek
Weed, CA

630. Patricia C. Simi TR
UA 23-Dec-00
Simi Exemption Trust
Roseburg, OR

638. Roger L. Slakey &
Mari-Ellen Slakey
Roger L.B. Slakey Rev. Trust
McLean, VA

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639. Elaine W. S. Smith
C. Bradford Smothers JT WROS
Hot Springs, AR

647. Julie Parker Sorin
Memphis, TN

640. Elwin R. Smith
Jacksonville, FL

648. Luka Sosic
Irvine, CA

641. Joe J. Smith (deceased) &
Teresa Smith JT TEN
Belle Fourche, SD

649. Raymond A. Sozio &
Annette M. Sozio
Ft. Lauderdale, FL

642. Leonard Smith
Mt. Vernon, IL

650. Billie H. Spencer (Trust & IRA)
Laguna Woods, CA

643. Soreu Soe
San Jose, CA

651. Robert E. Spencer
Raleigh, NC

644. Samuel M. Sokoloff
Long Beach, NY

652. Marie J. Spirito
Providence, RI

645. Christian Solms-Baruth (IRA)
Leonardtown, MD

653. N. Lavonne Spray
Moses Lake, WA

646. Melissa Solms-Baruth (IRA)
Leonardtown, MD

654. Nathaniel David Springer
Stillwater, OK

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655. Philip Stadtler, Jr.
Hilmar, CA

663. Howard Stinson
Aztec, NM

656. Philip Alan Steed, TTEE
Natalie E. Steed Trust
San Diego, CA

664. Earl J. Stitley (deceased)
Hanover, PA

657. Douglas W. Steele
Chapel Hill, NC

665. Paul H. Stofer &
Carol A. Stofer
Climax, MI

658. Dorothy M. Stenstrom
Medford, OR

666. Gloria C. Stone
Pompton Plains, NJ

659. B.V. Stephenson 06 Intervivos
Trust, UA Dated 11/1/06, Redfern
C. English, TTEE
Moraga, CA

667. Palmer L. Stone & Lu Ann R.
Stone (deceased) TIC
Fort Myers, FL

660. Marvin F. Stevenson &
Lucille P. Stevenson (deceased)
McDonough, GA

668. Stratim Capital, LLC
San Francisco, CA

661. Genevieve E. Stewart
Wayne, NY

669. Stratim Partners, LLC
San Francisco, CA

662. Stichting Pensioenfonds ABP
Amsterdam, Netherlands

670. Frank G. Straub
Fishkill, NY

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- | | |
|---|--|
| 671. Scott A. Strauss
Charlotte, NC | 679. Swiss & Global Asset
Management (Luxembourg) S.A.
c/o DRRT
Miami, FL |
| 672. Cora M. Streit TTEE
Cora M. Streit Trust
U/A DTD Dec. 16, 1992
DeSoto, TX | 680. Swiss & Global Asset
Management Ltd.
c/o DRRT
Miami, FL |
| 673. Norma C. Struthers
Orange, CA | 681. Swisscanto Asset Management
AG c/o DRRT
Miami, FL |
| 674. Wanda H. Swanson
Evans, GA | 682. Edwin Szumachowski
York, PA |
| 675. Kenneth D. Swartz &
Fran A. Swartz
Upper Sandusky, OH | 683. Suzanne Talbott
Marietta, CA |
| 676. Roger H. Swartz
Palatine Bridge, NY | 684. Andrew Edward Tarling
Erith, United Kingdom |
| 677. Charlene R. Swiney
Lancaster, CA | 685. Carter Cover Taylor
Tacoma, WA |
| 678. Janet Pomeroy Swingler
Dayton, WA | 686. Cherry Taylor
Eugene, OR |

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687. Joan M. Taylor, Trustee
UA 5/26/98
The Joan M. Taylor Trust
Spring Hill, FL

695. Catherine V. Toole
Mandeville, LA

688. Larry G. Taylor
Branson, MO

696. Margarida L. Torchiana
Beverly Farms, MA

689. Nancy K. Taylor
Cedar Key, FL

697. TOTAL S.A.
Courbevoie, France

690. Nancy Tempesta
East Hanover, NJ

698. Jana Lee Trebels Trust,
Dated January 19, 1998, Linda
Lee Trebels Fahey, Successor
Trustee Glenview, IL

691. Winnie Thein
Monterey Park, CA

699. Susan E. Trippet
Bloomington, IN

692. Jeanne E. Thompson
Fair Oaks, CA

700. Leonard G. Trotter
Rockaway Beach, OR

693. Ames B. Tillar &
Sudie D. Brothers JT TEN
Emporia, VA

701. David Tull
New Port Richey, FL

694. Doris Myrl Tillis
Laguna Woods, CA

702. Fern Key Ulmer
Lodge, SC

- | | |
|--|--|
| 703. T. Edward Umphres &
Lillian G. Umphres
St. Louis, MO | 711. Frederick Conrad Vonvoigt &
Frances Vonvoigt Tr.
UA 23-OCT-98,
The Vonvoigt Family Trust
Temecula, CA |
| 704. Matsuko Uyeda &
Wallace Ida (deceased)
Kapaa, Kauai, HI | 712. Mary N. Wade, GP
Johnson Investors, LP
Franklin, TN |
| 705. Helen Valkosky
Wintersville, OH | 713. Leonard & Mildred
Walker Family Trust
U/A DTD 11/01/2005
Petersburg, MI |
| 706. Christopher C. Van Collie TTEE
FBO Ruth A. Van Collie Trust
U/A/D 12-09-1996
Bradenton, FL | 714. Robert D. Walker
Fulton, MS |
| 707. Mary S. VanderLinde (including
TOD Scott. H. VanderLinde,
TOD Martha J. Hart,
TOD Kristin K. McKay)
Holland, MI | 715. Dale E. Wallace
Wichita, KS |
| 708. W. C. Vandiver, Jr.
Savannah, GA | 716. Richard B. Wallace TTEE
Scottsdale, AZ |
| 709. Emilio A. Vazquez &
Migdalia Vazquez &
Emilio A. Vasquez, Jr. JT TEN
Miami, FL | 717. Barbara L. Walsh
Narragansett, RI |
| 710. Anna Vilkaitis &
Agnes Scott Foundation, Inc.
Avon Park, FL | 718. Lawrence J. Warns
Watsonville, CA |

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719. Paul Watkins
Wellesley, MA

727. Sylvia Weissman
Teaneck, NJ

720. Larry L. Watson (IRA)
Hagerstown, MD

728. Elliot Wender
Memphis, TN

721. Patricia A. Watson
South Windsor, CT

729. Mark D. Wender; individually
and as custodian for Brian
Wender and Rebecca Wender
Memphis, TN

722. Lorraine S. Way
Charlotte, NC

730. Penina Wender
Memphis, TN

723. Elizabeth Weekley, TTEE
Independence, MO

731. Razelle Wender
Memphis, TN

724. Don Weining
Newark, DE

732. Stanley L. Wender
Memphis, TN

725. Cornelius F. Weinrich
Ventura, CA

733. Joseph P. White &
Joseph P. White Sharetrust
Fredericksburg, VA

726. Jack Weiss & Barbara Weiss
Yonkers, NY

734. Rosalie A. Whitehead
Peekskill, NY

735. Michael Whitney
Boynton Beach, FL

743. The William J. McGinnis,
Residuary Trust UA 2/23/08
Wilmington, DE

736. Mary Jane Whitty &
Roxane Egan
Schroon Lake, NY

744. R. Joseph Williams, Jr.
(Roth IRA)
High Ridge, MO

737. Harry A. Wicht &
Joyce A. Wicht
Culpeper, VA

745. Williamson Family Trust,
Robert P. and Madeline M.
Williamson, Trustees
Rancho Mirage, CA

738. Carolyn R. Wiedemeier
St. Louis, MO

746. Steven P. Williamson
Temecula, CA

739. Linda Wilburn &
Richard Wilburn, JT
Long Creek, OR

747. Jane R. Wilson
Carmel Valley, CA

740. Evangeline A. Wilcox
Johnstown, NY

748. Thomas J. Wilson &
Beth A. Wilson JT TEN
Wentzville, MO

741. Cleo J. Wiley
Bend, OR

749. Carolyn K. Winter Tr.
UA 6/23/05
Winter Family Trust
Coarsegold, CA

742. Timothy J. Willard
Fallbrook, CA

750. Justin D. Wolf
Charlotte, NC

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751. Jane B. Wollaston
La Jolla, CA

759. David P. Yaffe
Los Angeles, CA

752. Women of the Uniontown
Presbyterian Church
Faunsdale, AL

760. Wanda L. Young
West Milton, OH

753. The Women of the Uniontown
Presbyterian Church, First
Presbyterian Church
Faunsdale, AL

761. Arthur L. Youngblood &
Elizabeth E. Youngblood
Mobile, AL

754. Margaret C. Wood
Lilburn, GA

762. Owen R. Zachritz
Faulkton, SD

755. Donni K. Woods &
Phillip J. Woods
Wichita, KS

763. Nancy A. Zidle &
Gerald S. Zidle JTWROS
Hooksett, NH

756. Donald B. Workman
La Crescenta, CA

764. Judith A. Ziegert
Mason, OH

757. Hazel P. Wright (fka Hazel L.
Pugh) & Roy L. Pugh, JTWROS
Jacksonville, FL

765. Doris A. Zimmer TTEE
Lionel N. Zimmer TTEE
The Doris A. Zimmer Rev Trust
U/A DTD 7/7/92
Richmond, VA

758. Peter C. Wyatt
Newburyport, MA

766. Roger H. Zion, TTEE
Otto Knauss Trust
FBO Marjorie Zion
UAD 12/29/1976
Evansville, IN

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767. James E. Zlibin & Susan C.
Zlibin TTEE, Zlibin Living Trust
Minden, NV

775. Joseph F. Ferguson &
Agnes M. Ferguson
Gibsonia, PA

768. Cornelia Zoon
Federal Way, WA

776. Beverly Gaines
Dallas, TX

769. Phillip Bayarena
Ridgecrest, CA

777. Harry R. Gould
Nutley, NJ

770. Donna J. Baynes
(Roth IRA)
Belmont, CA

778. Virginia Higgins & Drexel Scott
Warren, OH

771. Donna T. Brimhall
Ogden, UT

779. Julia A. Hoyle (deceased)
Sanford, NC

772. Patricia P. Brown
Thomasville, GA

780. John D. Pruett and Penny Coull
TTEEs of John & Lucille Pruett
Intervivos Trust
Norristown, PA

773. Jane Burr
Southport, CT

781. Rodney J. Ross,
Brenda M. Ross, &
The Ross Family Trust
Gilbert, AZ

774. Julian R. Denison
Oldwick, NJ

782. Mildred E. Ruff
Cupertino, CA

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783. William J. Skeats &
Claire T. Skeats
Commack, NY

791. Jerry Hackett
Macomb, MI

784. Leland S. Swanson &
Luella M. Swanson
Puyallup, WA

792. Fay Helmon
Issaquah, WA

785. Charles E. Van Over
Montrose, CO

793. Clarice Hogan Jones
Charlotte, NC

786. Benny M. Wade
Reno, NV

794. James H. & Mary V.
Nieuwenhuis Trust,
UA 23-Jun-86
Mary V. Nieuwenhuis, Trustee
San Diego, CA

787. Melissa Abich-Espinoza
San Gabriel, CA

795. Marjorie M. Kelley
Westwood, MA

788. Susan C. Bauer
Garland, TX

796. Elizabeth A. King TTEE
FBO King Family Trust
UA 07 27 92
Fullerton, CA

789. Michael Evan Eldridge
Spring Lake, MI

797. Estate of Julius H. Linkkila
Brooklyn, CT

790. James A. Gibbs
Carson City, Nevada

798. Liane Lion
London, England

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799. Thomas Loffland
Fort Worth, TX

807. Francis R. Slattery &
Philomena C. Slattery JT TEN
Norristown, PA

800. Joe E. Maxwell
Nashville, TN

808. Philomena C. Slattery &
Francis R. Slattery JT TEN
Norristown, PA

801. Thelma McClain (deceased)
Riverside, CA

809. Karen Glover Wilmoth, TRS
FBO Wilmoth JT Grantors Trust
Dallas, TX

802. Mosko Irrevocable Trust
UA 3 22 91
Frank Thomas Mosko, Trustee
Bayfield, CO

810. Channa Weeratunge
Kinwood, TX

803. Geena J. Oh
Los Angeles, CA

811. Rotondo Family Trust
Redmond, WA

804. Michael F. Sands
Tustin, CA

805. George N. Scheller
Tucson, AZ

806. Francis R. Slattery IRA
Norristown, PA

SPA71

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United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

Date:

In Re:

-v-

Case #:

()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

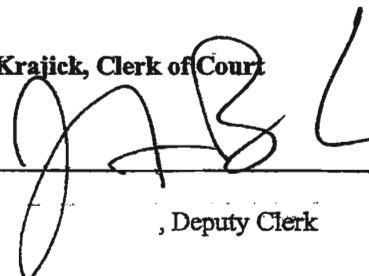
If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

Ruby J. Krajick, Clerk of Court

by: _____



, Deputy Clerk

APPEAL FORMS

U.S.D.C. S.D.N.Y. CM/ECF Support Unit

1

Revised: May 4, 2010

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United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-V-

NOTICE OF APPEAL

civ. ()

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____
(day) (month) (year)

(Signature)_____
(Address)_____
(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

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FORM 1

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-V-

MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL

civ. ()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
requests leave to file the within notice of appeal out of time.
desires to appeal the judgment in this action entered on _____ (party)
notice of appeal within the required number of days because: _____ (day) but failed to file a

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

()

(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

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~~District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).~~

FORM 3

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have

served a copy of the attached _____

upon _____

whose address is: _____

Date: _____
New York, New York

(Signature)_____
(Address)_____
(City, State and Zip Code)

FORM 4

APPEAL FORMS

SPA75

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FORM 2

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-V-

NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time
_____ respectfully requests the court to grant an extension of time in
(party)
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____
(date)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

()

(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the

APPEAL FORMS

SPA76

Case 1:10-cv-00275-PKC Document 116 Filed 04/25/13 Page 1 of 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, NY**

IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION	Master File No. 09 MDL 2058(PKC) ECF CASE
THIS DOCUMENT RELATES TO: CHARLES N. DORNFEST, <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> BANK OF AMERICA CORPORATION, MERRILL LYNCH & CO, INC., KENNETH D. LEWIS, JOE L. PRICE, NEIL A.COTTY, JOHN A. THAIN, WILLIAM BARNET III, FRANK P. BRAMBLE, SR., JOHN T. COLLINS, GARY L. COUNTRYMAN, TOMMY R. FRANKS, CHARLES K. GIFFORD, MONICA C. LOZANO, WALTER E. MASSEY, THOMAS J. MAY, PATRICIA E. MITCHELL, THOMAS M RYAN, O. TEMPLE SLOAN, JR., MEREDITH R. SPANGLER, ROBERT L. TILLMAN, and JACKIE M. WARD, <p style="text-align: center;">Defendants.</p>	Civil Action No. 10-CIV-275 (PKC) ECF Case <p style="text-align: center;"><u>NOTICE OF APPEAL</u></p>

NOTICE is hereby given that Plaintiff Charles N. Dornfest hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment entered on April 9, 2013 (Docket # 871 in C.A. No. 09 MDL 2058 and Docket # 109 in C.A. No. 10

SPA77

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Civ. 275), insofar as the Judgment dismissed the complaint of Plaintiff Charles N. Dornfest for violations of the Securities Laws; and the ORDER, entered on September 29, 2011 (Docket # 468 in C.A. No. 09 MDL 2058 and Docket # 66 in C.A. No. 10 Civ. 275), denying Plaintiff Charles N. Dornfest the right to move to certify a class of BoA option investors.

Dated: New York, New York
April 24, 2013

BRAGAR EAGEL & SQUIRE, PC

By: s/ Jeffrey H. Squire
Jeffrey H. Squire (JS 8910)
Raymond A. Bragar
Lawrence P. Eagel
885 Third Avenue, Suite 3040
New York, New York 10022
Telephone: (212) 308-5858
Facsimile: (212) 486-0462

ABBIEY SPANIER, LLP

By: s/ Judith L. Spanier
Judith L. Spanier
Karin E. Fisch
212 East 39th St.
New York, New York 10016
Telephone: (212) 889 3700
Facsimile: (212) 684-5191

Attorneys for Plaintiff

To: ECF Service List